THE FIREARMS OWNER PROTECTION ACT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST AND SECOND SESSION

ON

S. 1030

A BILL TO PROTECT FIREARMS OWNERS' CONSTITUTIONAL RIGHTS, CIVIL LIBERTIES, AND RIGHTS TO PRIVACY

DECEMBER 9 AND 11, 1981; AND FEBRUARY 8, 1982

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THE FIREARMS OWNER PROTECTION ACT

WEDNESDAY, DECEMBER 9, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Present: Senators Thurmond, Grassley, and DeConcini.

Staff present: Eric Hultman, general counsel to full committee; John Maxwell, chief counsel and staff director, Subcommittee on Agency Administration; and Lynda Nersesian, counsel, Subcommittee on Agency Administration.

Senator GRASSLEY [acting chairman]. For our chairman, I am going to call this hearing to order.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA, AND ACTING CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today marks the first day of hearings on legislation affecting the Gun Control Act of 1968. We will hear today from a number of witnesses who will testify as to their experiences with this act.

Essentially we will examine S. 1030's approach to the long list of oppressive controls that have emerged since the act that have the effect of burdening the second amendment's mandate that, and I quote, "A well-regulated militia being necessary to the security of a free state, the rights of the people to keep and bear arms shall not be infringed."

I believe that we have to emphasize that crime control is crime control and not gun control. A gun does not create crime; individuals commit crime. Light sentences for lawbreakers and the fact that most of the crimes being committed are being done by repeat offenders or criminals out on bond or parole are responsible for the upsurge in crime.

If we do something to make crimes unprofitable, as many of us are attempting to do in the revision of the Criminal Code, I think that the logic suggests that we will reduce the rate of crime.

It is time that we decided whether this society exists for the benefit of the law-abiding individual or for the benefit of the criminal. If we are going to exist with a semblance of order, we must promise the criminal swift, sure, and substantial punishment. I do not believe that gun control is the answer.

At this time, without objection, we will place into the record the statement of the chairman of the committee, Senator Strom Thurmond, along with the text of S. 1030.

[Prepared statement of Chairman Strom Thurmond and S. 1030 follow:]

PREPARED STATEMENT OF CHAIRMAN STROM THURMOND

Today, the committee begins hearings on S. 1030, a bill to amend the Gun Control Act of 1968 to provide protections for law-abiding citizens who engage in the transfer, sale, exchange, and transportation of firearms. The bill also contains a number of clarifications of terms in the 1968 Act and provides for mandatory minimums for Federal felonies committed with a firearm or destructive device.

In 1968, when the Congress was considering legislation to place Federal restraints on the movement of firearms in interstate commerce, the intent of Congress was to place restrictions on those individuals or companies who were actually in the business of buying, selling, manufacturing, and distributing firearms. The 1968 act was not intended to reach individuals who were not engaging in the business of buying, selling or exchanging firearms as a principal occupation. What has happened, however, is that the Federal agency charged with administration of most of the 1968 act—the Bureau of Alcohol, Tobacco and Firearms (BATF)—has issued broad reaching regulations and has engaged in the harassment of otherwise innocent citizens.

The committee will hear today from a number of private citizens who have experienced abuses under the 1968 act and its administration by BATF. The provisions of the 1968 law that led to these abuses were clearly, in my opinion, unintended by the Congress to do so. Unfortunately, because of the rush to pass some kind of gun control legislation in 1968 many of the clarifications now in S. 1030 were not made. As a result, many unfortunate abuses have occurred.

This bill, in my judgment, does not "gut" the 1968 Gun Control Act as some allege. Rather, it provides changes that will eliminate abuses against law-abiding citizens. It does not diminish the effect of the law against those who are engaged in plainly illegal activities. Criminals who wish to get their hands on a firearm to commit a crime will do so notwithstanding most of the provisions of the 1968 act. On the other hand, we should not continue to penalize legitimate gun owners who are not engaged in either criminal activity or a business within the scope of interstate commerce.

We welcome a number of witnesses to the committee today, especially several colleagues in Congress who have been in the forefront of efforts to enact S. 1030.

II

97TH CONGRESS
1ST SESSION

S. 1030

To protect firearms owners' constitutional rights, civil liberties, and rights to privacy.

IN THE SENATE OF THE UNITED STATES

APRIL 29 (legislative day, APRIL 27), 1981

Mr. MCCLURE (for himself, Mr. MELCHER, Mr. HELMS, Mr. DECONCINI, Mr. MATTINGLY, Mr. JACKSON, Mr. JOHNSTON, Mr. DOMENICI, Mr. THURMOND, Mr. SASSER, Mr. D'AMATO, Mr. ABDNOR, Mr. QUAYLE, Mr. DURENBERGER, Mr. LAXALT, Mr. STEVENS, Mr. TOWER, Mr. HEFLIN, Mr. SCHMITT, Mr. WALLOP, Mr. DANFORTH, Mr. CANNON, Mr. GARN, Mr. GOLDWATER, Mr. BENTSEN, Mr. BURDICK, Mr. SYMMS, Mr. DENTON, Mr. HATFIELD, Mr. HUMPHREY, Mr. HATCH, Mr. EAGLETON, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect firearms owners' constitutional rights, civil liberties, and rights to privacy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

The Congress finds that the rights of citizens to keep and bear arms under the second amendment to the United States Constitution; their rights to security against illegal

and unreasonable searches and seizures under the fourth amendment; their protections against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and their rights against unconstitutional exercise of authority under the ninth and tenth amendments; have been infringed under, and in enforcement of, existing firearm statutes.

The Congress finds that the agencies charged with enforcement of these laws have divulged information concerning private citizens to local administrators, and to the public, for the purpose of causing harassment and embarrassment of these citizens, in violation of the rights of those citizens under the Privacy Act, as enacted by Congress.

The Congress further finds that its intent, as expressed in the preamble to the Gun Control Act, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms, . . ." or "to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes," has been thwarted by these enforcement practices which are aimed at harassing, burdening, and harming those law-abiding citizens who choose to own and use firearms for legitimate purposes.

TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE (18 U.S.C. 921–928)

AMENDMENTS TO SECTION 921

SEC. 101. (a) Subsection (a)(10) is amended by deleting the words "manufacture of" and inserting in lieu thereof the words "business of manufacturing".

(b) Subsection (a)(11) is amended by deleting the words "or ammunition" in paragraph (A).

(c) Subsection (a)(12) is amended by deleting the words "or ammunition".

(d) Subsection (a)(13) is amended by deleting the words "or ammunition".

(e) A new subsection (a)(14) is inserted after subsection (a)(13), to read as follows; and the following subsections are renumbered accordingly:

"(14) The term 'engaged in the business' means:

"(A) As applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.

"(B) As applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade

or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured.

"(C) As applied to a dealer in firearms, as defined in section 921(a)(11) (A) and (C), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms or who sells all or part of his personal collection of firearms.

"(D) As applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit. The term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

"(E) As applied to an importer of firearms, a person other than a dealer who imports one or more firearms in any calendar year.

"(F) As applied to an importer of ammunition, a person who imports any ammunition for sale or distribution.".

(f) Subsection (a)(20) is amended to read as follows: "The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less: *Provided, however,* That what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: *Provided further,* That any conviction which has been expunged or set aside or for which a person has been pardoned or has had his or her civil rights restored shall not be considered a conviction under the provisions of this Act.

AMENDMENTS TO SECTION 922

SEC. 102. (a) Subsection (a)(1) is amended to read as follows: "for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; and (B) except

a licensed importer or licensed manufacturer to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce".

(b) Subsection (a)(2) is amended—

(1) by deleting the words "or ammunition"; and

(2) by deleting the words "and subsection (b)(3)".

(c) Subsection (a)(3) is amended to read as follows:

"(3) for any person to transport into or receive in the State where he resides any firearm purchased or otherwise acquired by such person outside that State, if such purchase or acquisition of such firearm would be in violation of any published ordinance or law of the State or locality where he resides or was in violation of any published ordinance or law of the State or locality where the purchase or acquisition occurred.

(d) Subsection (a)(5) is amended to read as follows:

"(5) for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who does not reside in the same State as the transferor when the transferor knows or has reasonable cause to believe that the acquisition of such firearm by such person would be in violation of any published ordinance or law of the State or locality where the transferee resides or would be in violation of any published ordi-

nance or law of the State where such transfer occurs; except that this paragraph shall not apply to the loan or rental of a firearm to any person for temporary use for lawful purposes; and".

(e) Subsection (b) is amended—

(1) by deleting paragraph (3) and redesignating paragraphs (4) and (5) as (3) and (4) respectively;

(2) by deleting in paragraphs (2) and newly designated (4) the words "or ammunition" wherever they appear.

(3) by (i) deleting the words "Paragraph (1), (2), (3), and (4)" and inserting in lieu thereof the words "Paragraphs (1), (2), and (3),"; and (ii) deleting the words "Paragraph (4)" and inserting in lieu thereof the words "Paragraph (3)".

(f) Subsection (d) is amended—

(1) by deleting the words "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" the first time they appear and inserting in lieu thereof the words "any person";

(2) by deleting in paragraph (3) the word "or" following the semicolon;

(3) by replacing the period in paragraph (4) with a semicolon; and

(4) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship.".

(g) Subsection (g) is amended—

(1) by deleting the words "is under indictment for, or who" in paragraph (1);

(2) by deleting in paragraph (3) the word "or" following the semicolon;

(3) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship;"; and

(4) by deleting the words "to ship or transport any firearm or ammunition in interstate or foreign commerce" and inserting in lieu thereof the words "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

which has been shipped or transported in interstate or foreign commerce.".

(h) Subsection (h) is amended—

(1) by inserting after the word "any" and before the word "person" the words "individual who to his knowledge and while being employed by any";

(2) by deleting the words "is under indictment for, or who" in paragraph (1);

(3) by deleting in paragraph (3) the word "or" following the semicolon;

(4) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who having been a citizen of the United States, has renounced his citizenship;"; and

(5) by deleting the words "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" and inserting in lieu thereof the words "in the course of such employment to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

which has been shipped or transported in interstate or foreign commerce.".

(i) A new subsection (i) is inserted after subsection (h) to read as follows; and the following subsections are renumbered accordingly:

"(i) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.".

AMENDMENTS TO SECTION 923

SEC. 103. (a)(1) Subsection (a) is amended: (i) by deleting the words "No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from the Secretary." and inserting in lieu thereof the words "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary."; and (ii) by deleting the words "and contain such information".

(2) Subsection (a)(3)(B) is amended by deleting the words "or ammunition for firearms other than destructive devices".

(b) Subsection (b) is amended by deleting the words "and contain such information".

(c) Subsection (c) is amended by adding the words *"Provided, however,* That nothing in this chapter shall be construed as prohibiting a licensed dealer from maintaining a personal collection of firearms not part of his business inventory and which shall not be subject to the recordkeeping requirements of this chapter.

(d) Subsection (e) is amended by inserting before the word "violated" the word "willfully".

(e) Subsection (f) is amended—

(1) by inserting the words "de novo" before the word "judicial" in paragraph (3);

(2) by adding the words "whether or not such evidence was considered at the hearing held under paragraph (2)." after the words "to the proceeding" in paragraph (3); and

(3) by inserting at the end thereof the following new paragraph:

"(4) If criminal proceedings are instituted against a licensee alleging violations of this chapter or regulations promulgated thereunder, and the licensee is not convicted of such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under the provisions of this chapter where such denial or revocation is based in

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whole or in part on the facts which formed the basis for the criminal charges.".

(g) Subsection (g) is amended to read as follows:

"(g)(1) Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. The Secretary, when he has probable cause to believe a violation of this chapter has occurred, and that evidence thereof may be found on such premises, may enter during business hours the premises (including places of storage) of any firearms importer, manufacturer, dealer, or collector or any importer or manufacturer, of ammunition for the purposes of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. This entry and onsite inspection, based on such probable cause shall be the sole and exclusive procedure for inspecting or examining such records, documents, firearms, or ammunition kept or stored by such importers, manufacturers, dealers, or collectors and such procedure shall not be construed as authorizing the Secretary to

seize any records or other documents. The Secretary may make available to any State or any political subdivision thereof any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition and he may provide information as to the ownership of any firearm, to the extent such information may be contained in the records required to be maintained by the provisions of this chapter, when so requested by any Federal, State, or local law enforcement agency.

"(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition, of firearms. Such records shall include the name and addresses of any person to whom the collector sells, or otherwise disposes of a firearm, and may be inspected only in accordance with the provisions of paragraph (1) of this subsection.".

(g) Subsection (j) is deleted.

AMENDMENTS TO SECTION 924

SEC. 104. (a) Subsection (a) is amended by inserting after the word "Whoever" the word "willfully".

(b) Subsection (c) is amended to read as follows:

"(c) Whoever uses any firearm or destructive device against the person of another, to comit a felony with respect to which the district courts of the United States have original and exclusive jurisdiction shall be sentenced to a term of imprisonment of not less than one year nor more than ten years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment of not less than five years nor more than twenty-five years. Notwithstanding any other provision of law, in the case of any conviction under this subsection, the court shall not suspend the sentence of such person or give him a probationary sentence, nor shall such person be paroled or furloughed before completing such minimum sentence: *Provided*, That no person shall be sentenced under this subsection if he establishes to the satisfaction of the court that, the use of the firearm or destructive device was to protect his person or the person of another from a reasonably perceived immediate danger, or was in defense of his person, or the person of another or the property of either from conduct constituting a felony.".

(c) Subsection (d) is amended to read as follows:

"(d)(1) Any firearm or ammunition involved in or used in any willful violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject

to seizure, and upon conviction of the owner or possessor of such firearms or ammunition, may be forfeited. All provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided,* That any dismissal of charges upon which such seizure is based, any verdict or disposition on such charges other than 'guilty', or any failure of the United States to prosecute such owner or possessor on such charges within one hundred and twenty days of such seizure, shall constitute an absolute bar to such forfeiture, and the seized firearms or ammunition shall thereupon be returned to the owner or possessor.

"(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States, shall be subject to seizure, forfeiture, and disposition.".

AMENDMENTS TO SECTION 925

SEC. 105. (a) Subsection (c) is amended:

(1) by deleting the words "has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)" and inserting in lieu thereof the words "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition";

(2) by deleting the words "and incurred by reason of such conviction,";

(3) by deleting the words "Secretary may grant" and inserting in lieu thereof the words "Secretary shall grant";

(4) by deleting the words "if it is established to his satisfaction that the circumstances regarding the conviction, and" and inserting in lieu thereof the word "unless";

(5) by deleting the comma after the word "reputation";

(6) by deleting the words "will not be likely" and inserting in lieu thereof the words "will be likely";

(7) by deleting the words "and that the granting of the relief would not be contrary to the public interest"; and

(8) by adding after the words "to public safety." the words "Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a de novo judicial review of such denial. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered by the Secretary in denying the application.".

(b) Subsection (d) is amended—

(1) by deleting the words "may authorize" and inserting in lieu thereof the words "shall authorize";

(2) by deleting the words "the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that"; and

(3) by deleting in paragraph (3) the words "generally recognized as particularly"; and

(4) by deleting the words "may permit" and inserting in lieu thereof the words "shall permit".

AMENDMENTS TO SECTION 926

SEC. 106. Section 926 is amended by—

(a) redesignating existing section 926 as subsection (a);

(b) inserting the word "only" after the word "prescribe";

(c) deleting the words "as he deems reasonably" and inserting in lieu thereof the words "as are";

(d) deleting the words "The Secretary shall give reasonable public notice, and afford interested parties opportunity for hearing, prior to prescribing such rules and regulations" and inserting in lieu thereof the words: "*Provided,* That no such rule or regulation may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions by established".

(e) inserting a new subsection (b) as follows:

"(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, prior to prescribing such rules and regulations.".

(f) inserting a new subsection "(c)" as follows:

"(c)(1) Simultaneously with the promulgation of any rule or regulation under the provisions of this Act, the Secretary shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Such rule shall not become effective if within ninety days of continuous session of Congress, one House of Congress adopts a resolution, the matter after the resolving clause which is as follows: "That the disapproves the rule promulgated by dealing with the matter of , which rule was transmitted to the Congress on ".", the first blank being filled with the House of Congress acting, the second blank being filled with the name of the agency issuing the rule, the third blank being filled with the title of the rule and such further description as may be necessary to identify it, and the fourth blank being filled with the date of transmission to Congress.

"(2) The Secretary may not promulgate new rules or regulations identical to any rules or regulations disapproved pursuant to the provisions of this section unless the Congress enacts additional legislation with respect to the Secretary's

powers with relation to the subject matter of the disapproved rule or regulation.".

(g) by inserting a new subsection (d) as follows:

"(d) The Secretary shall not prescribe regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of title 18, United States Code, to complete affidavits or forms attesting to that exemption.".

AMENDMENTS TO SECTION 927

SEC. 107. Section 927 is amended by adding the words: *Provided, however,* That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void.".

TITLE II—AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 (18 U.S.C. APP. 1201–1203)

SEC. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of the appendix to title 18, United States Code) is hereby repealed.

Senator GRASSLEY. Now I would like to turn to Senator DeConcini, and then I will call our first witness, who is Senator Burdick from North Dakota.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you. Let me add my thanks to the chairman of the committee, Senator Thurmond, for holding these hearings. I would excuse myself after my statement because I have to chair some hearing for the Select Committee on Indian Affairs this morning, but I hope to be back Friday for the second day of hearings.

Mr. Chairman, I have been a cosponsor of this legislation in both the 96th and the 97th Congresses, and I am extremely pleased to see this committee continue its examination of this important legislation. In the 96th Congress, I chaired hearings on the oversight of the Bureau of Alcohol, Tobacco, and Firearms, and I was dismayed to learn of the abuse that many law-abiding firearms owners suffered under the existing Federal law.

I believe the existing Federal law needs modification not only to protect the rights of law-abiding citizens, but also to insure that those who use firearms to violate the law are adequately punished. Only by making punishment swift and certain for those who use guns to break the law will we succeed in eliminating handgun crime, or at least reduce it substantially.

We have heard the argument for gun control many times before. It is said that eliminating the private ownership of guns we can eliminate handgun crime. Aside from the constitutional limitations on such an approach, there are practical reasons why such a ban would not work. I am sure that the hearings will point out today many of those reasons and it will be clear by the record.

With a national ban on guns, or even registration of guns, we would be attempting to control the possession of guns by the most lawless elements of society. In other words, we would be using a tool that depends on voluntary cooperation to try to control those least likely to cooperate.

I believe the approach of S. 1030 is the correct one. It would require mandatory sentencing without parole for those convicted of using firearms to commit a felony. It would make it illegal for persons under indictment for a serious crime to ship or receive firearms in interstate commerce.

The bill also corrects many of the deficiencies in the current law that caused many of the abuses I uncovered in the course of hearings I conducted in the last Congress. Most important of these is that the bill for the first time in Federal law gives a cogent definition of who is a "dealer" of firearms.

I look forward to seeing these hearings and reading them carefully. I am pleased, once again, that the chairman has selected today to hold the first of several days of hearings.

I thank the chairman for his courtesy.

Senator GRASSLEY. Senator Burdick is a long-time Member of the Senate, a former hard-working member of this committee. He was active in the passage of the act about which we are talking now.

Mr. Burdick?

STATEMENT OF HON. QUENTIN N. BURDICK, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Mr. Chairman, members of the committee, yes, it is good to come back home. I sat on this committee for many, many years and enjoyed every day of it.

Mr. Chairman, I am very pleased to appear before your committee this morning in support of S. 1030, the Federal Firearm Owners Protection Act. I am one of the many cosponsors of this legislation because the reforms which it writes into the Gun Control Act of 1968 are legitimate and pressing. The time has come for Congress to put an end to some of the well-documented abuses that have been committed by the Bureau of Alcohol, Tobacco, and Firearms in the name of gun control.

This is not a bill to dismantle the Gun Control Act of 1968. I supported that legislation at the time it became law, and I still support its basic provisions, including its requirement that persons dealing in firearms be federally licensed, its prohibition of interstate mail-order sale of any firearms or ammunition, and its establishment of minimum penalties for the use of a firearm in the commission of a Federal felony.

But in the haste to enact broad gun control legislation following the tragic assassinations of Martin Luther King and Robert F. Kennedy, the Congress ignored some basic aspects of criminal and constitutional law. The result has been a regulatory nightmare, with honest, law-abiding gun owners and gun dealers the subject of oppressive bureaucratic harassment and unjustified prosecution. We must now act to correct our previous errors of omission.

For example, it is a fundamental premise of criminal law that, except in extraordinary cases, an act can only constitute a crime if both of two elements are present: the wrongful deed itself and the intent to commit a crime. But the 1968 gun control law proscribes a number of activities without regard to whether the violation was a deliberate attempt to evade the law or an innocent mistake. As a result, the Federal agency charged with enforcement of the law has brought far too many cases based on technical, inadvertent violations of the statute by totally honest, law-abiding citizens. S. 1030 will stop this practice by requiring that violations be shown to be "willful" before a person can be convicted under the act.

Another basic premise of our system of laws is that our citizenry must be able to perceive what is lawful and what is unlawful if it is to be held accountable for illegal conduct.

The Gun Control Act of 1968 sets forth detailed licensing requirements for those engaged in the business of dealing in firearms or ammunition, but nowhere does it define the term "engaged in business." Once again, overzealous BATF agents have taken advantage of this oversight by enticing gun collectors into selling a few guns from their collection and then charging them with having engaged in business without a license.

In the 12-month period preceding July 1, 1979, nearly 25 percent of all of BATF's firearms cases involved the charge of dealing without a license. S. 1030 will resolve this clearly misguided interpreta-

tion of the 1968 law by explicitly defining engaged in the business of dealing to include only those who devote time and labor to the selling of guns with the object of making a livelihood and profit.

It is also an important principle of our legal system that a person should not be penalized twice for the same action. But it happens all too frequently that even when an individual is tried and acquitted of criminal charges stemming from an unintentional violation of the Gun Control Act, the BATF renews its harassment by initiating a civil action for forfeiture of his gun collection or revocation of his dealer's license, based on exactly the same evidence that was rejected at the criminal trial. The toll on such individuals, in terms of attorneys' fees, lost business, and emotional trauma, is horrendous.

S. 1030 will rectify this situation by providing that when an individual has been acquitted of an alleged violation of the law or his case dismissed, the same evidence may not be used to confiscate his property or revoke his license.

These are but a few of the examples of the worthwhile changes incorporated in this legislation. Other provisions act to stiffen the requirement of a mandatory jail sentence for use of a gun in the commission of a Federal felony and to require a showing of probable cause before a gun dealer's premises may be entered and searched by Government agents.

It is my sincere hope that this bill will force the BATF, or whatever Federal agency in the future is charged with enforcement of the 1968 Gun Control Act, to focus its efforts where they are most needed—on the criminal element in this country, and not on hard-working, law-abiding, honest citizens.

Mr. Chairman, I respectfully request your committee's quick approval of this important legislation, and I thank you for the time allowed.

Senator GRASSLEY. Thank you, Senator Burdick. You know you are welcome to stay if you want to question any of the witnesses as well.

It is now my notice that Senator McClure is not back from the White House yet. He was to have been our first witness. Congressman Volkmer was here, but he had to go back to the House to vote. Congressman Ashbrook was going to testify, but I do not believe he will be able to attend. Therefore, without objection, I would like Congressman Ashbrook's testimony to appear in the record.

[Prepared statement of Congressman John M. Ashbrook follows:]

PREPARED STATEMENT OF HON. JOHN M. ASHBROOK

Mr. Chairman and Members of the Committee: It is with great pleasure that I participate this morning in these important hearings on the Federal Firearms Reform Act, S.1030. I have cosponsored its companion legislation in the House of Representatives (H.R. 3300) with great enthusiasm in this Congress and the last. Regretfully, I cannot report that we are enjoying any progress in our counterpart committee in the House.

Mr. Chairman, during my tenure as a Member of Congress, I have witnessed, with great despair, a serious erosion of the second amendment rights of law-abiding and honorable Americans who want to own and use firearms for sporting purposes and protection. In recent years, other precious freedoms of those citizens, such as the right to be secure from unreasonable searches and seizures, have come under vicious attack. This deplorable state of affairs must be rectified immediately.

As we all know, the Reagan administration is now in the process of revamping the administrative mechanisms through which Federal firearms laws are enforced. I, for one, will not shed many tears over the demise of the Bureau of Alcohol, Tobacco and Firearms. This action alone, however, should not give us much comfort since it fails to correct the fundamental problem—the Gun Control Act of 1968. That act, in my view, is one of the most dangerous pieces of legislation which this Congress has ever sent to the President's desk. Fourteen years of miserable experience attest to that fact. In the wrong hands, it is a deadly weapon against the security of innocent Americans. It is incumbent upon us to make amends.

Mr. Chairman, the contents of this bill will no doubt be described with particularity by other witnesses. However, I would like to draw to this committee's attention some specifics which I applaud. First, it defines "engaged in the business" of dealing in firearms. This is a term which the BATF refused for years to define and used to entrap innocent gun collectors. Second, it includes important protections for gun owners whose firearms are confiscated by providing for their return upon acquittal. Currently, after they have been cleared by the courts, gun owners must wait for the BATF, in its infinite beneficence, to return their property. Countless individuals have contacted me about firearms which have been retained for years after charges have been dropped or verdicts of not guilty, entered. Third, S.1030 would impose strong mandatory penalties on those who should be the focus of firearms laws—the real criminals who use firearms to commit dangerous crimes. Although the 1968 act attempted to impose some mandatory penalties it contains many loopholes which thwart that attempt. In addition, those penalties do not apply to first offenses.

Mr. Chairman, I want to commend this committee for taking this important first step toward correcting the abominable deficiencies in the Gun Control Act of 1968 which plague innocent and law-abiding firearms owners. I pledge my full cooperation in this endeavor and hope that we can enact legislation without undue delay.

Senator GRASSLEY. I would like to call the citizen witnesses one at a time. If Senator McClure or Congressman Volkmer come, I would ask the other witnesses to let us interrupt their testimony so that the Senator and the Congressman can complete their testimony.

At this time I would like to call Paul and Billie Hayes of Bosque Farms, N. Mex.

Senator DECONCINI. Mr. Chairman?

Senator GRASSLEY. Yes, Senator DeConcini.

Senator DECONCINI. I have to leave. I just want to welcome the Hayes here. They testified before us when we held oversight hearings in the Appropriation Committee. Indeed, their testimony will be enough to shake anyone's head and make them wonder what has happened to this great Nation of ours. I extend them a personal welcome. I understand that at least some of the litigation is behind them now.

Mrs. HAYES. Thank goodness.

Senator DECONCINI. I am sure the hurt and the injury is still there, but I am very interested in your well-being after what you have been through.

Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you.

Please proceed.

STATEMENT OF PAUL AND BILLIE HAYES, BOSQUE FARMS, N. MEX.

Mrs. HAYES. I think I will start first if it is all right.

Senator GRASSLEY. Yes.

Mrs. HAYES. We have been through everything. We have been through the civil and we have been through the criminal and we

have been through the administrative. You name it, we have had it.

But I think the thing that bothers me most of all is the fact that when the first two agents came into our store we knew that we could not sell to the Texas resident, but he had his buddy with him who was a New Mexico resident. So we called the BATF office in Albuquerque and they told us we could sell, and we did. Then we were arrested.

That bothered me I think more than anything that has happened to us—that they lied. Maybe they didn't lie, but they did not tell us that you cannot sell to the New Mexico resident so that he can give it to the Texas resident. They failed to tell us that, and we were trying to find out.

If you cannot call and ask the department that is supposed to be regulating you, who can you ask? To me, that is the worst thing.

Then after we finally got our guns back—it was 3 years, 5 months, and 2 days before we finally got our merchandise back. During this time we had to start from scratch. Because the lawyer's fee cost us $20,000, we had no money to stock with and we had to start from scratch. Nevertheless, we did not give up.

We got our guns back and we thought we were in good shape. However, we found out that they had broken some of our guns internally. We sold them but the customers brought them back. We called a gunsmith and had him look at them. They had taken some of the better pistols and broken them inside. You cannot tell from the outside.

On the outside the exterior of the guns is terrible. They took them to a gunsmith. They had them coal-blued. I do not know if you realize what coal blue is. It is to cover up the rust and the scratches, but you can still see them. Of course, coal blue does not stay very long. The stocks were just scratched terribly.

You would not believe the people that they are sending down there to our little store. Remember, we are out in the country. We have a very, very small gun shop, but they send everybody from—well, last week we got one from Puerto Rico. I do not know why Puerto Rico knew about our gunshop, but they did.

There were six people trying to buy guns with New Mexico residents, of course. They had two Indians with them. The Indians did not know that it was illegal until we told them. They were going to buy the guns and give it to the Puerto Ricans. There is no way that this could be a coincidence.

There are so many different people who come, so many far-out people, like under-aged people and all sorts of different types of thing. This is what I think should be stopped, by all means, because the dealer is always responsible for whatever happens. Sometimes you do not know what these people are going to do.

Now I will let my husband talk.

Mr. HAYES. I really do not know how much else I could add. It seems like she covered the whole field. Nevertheless, I think the harassment of the BATF agents, there is no need for it. I just wonder how you get those people off your back.

I have been through open-heart surgery as a direct cause of what those people did to me. I have been acquitted by a jury in 7 minutes after the case went to trial, and still they are after me. I

wonder when they are going to let up. Do they intend to put me out of business, kill me, or what? I do not know, but I have had about all I can stand of it.

Senator GRASSLEY. How much did it cost you to personally fight your prosecution by BATF?

Mr. HAYES. More than $20,000 in lawyer fees alone.

Senator GRASSLEY. Were you ever made aware that you may be violating Federal law while engaging in the buying, selling, or trading of firearms?

Mr. HAYES. No, sir.

Senator GRASSLEY. What kind of Federal law do you believe is reasonable to protect the public, yet allow people like yourselves to buy, sell, and exchange firearms? Do you have any thoughts about what basic Federal law ought to be, if any?

Mr. HAYES. I do not think we need any, not to protect decent law-abiding citizens. The crook you can't stop. He will always have a gun. You cannot take them.

Twenty thousand dollars is only part of what we have spent. The operation was $23,000. The guns that they brought back, the 170 guns they brought back, suffered at least 50 percent damage. I had to discount the guns that I sold by about 50 percent of what those guns cost me 3 years and 5 months ago.

Senator GRASSLEY. What would that cost be, that 50 percent depreciation?

Mr. HAYES. Around $35,000.

Senator GRASSLEY. $35,000.

Mr. HAYES. We are out in the neighborhood of $100,000. I have never even had a traffic ticket. I have never been arrested, never had any kind of trouble. For no reason, all of sudden I am a criminal.

I knowingly broke no law. There was no intent on my part to break any laws. I fought for this country, and at one time highly respected this country and what it stood for, but I am beginning to lose that respect.

Senator GRASSLEY. Well, of course, don't forget that the process works, because the McClure-Volkmer bill, for instance, has 60 cosponsors in the Senate and is gaining support every day.

I have no further questions, but you want to remember that, inasmuch as there are other members of the committee who could not be here, you may get some questions in writing. We would appreciate it very much if you would respond to those for the record. Any other statement you want to submit to the record will be received, any written statement that you want to make.

Mr. HAYES. All right. Thank you.

Senator GRASSLEY. Thank you very much.

Your testimony is going to be very valuable to us in analyzing this legislation.

Our next witness is Robert Wampler, Mechanicsville, Va.

Mr. Wampler, you may proceed. Welcome to the committee. Thank you for helping us research this legislation.

STATEMENT OF ROBERT WAMPLER, MECHANICSVILLE, VA.

Mr. WAMPLER. Mr. Chairman, I do appreciate the opportunity to address this committee and I thank you for the privilege of relating the experiences that I had at the hands of the BAFT. I hope that Congress can take action that will prevent other Americans from suffering the indignities that I have suffered.

I have submitted a copy of some previous testimony for the record, and I will try to summarize the events for the committee and bring you up to date since that testimony.

I have been employed by a major pharmaceutical company for about 13 years and I am presently a manager of personnel. I hold a B.S. degree in pharmacy and a graduate degree in business. I have been active in civic and professional work, and I enjoy a good reputation in my community.

As a hobby I have collected guns for over 20 years, and I have obtained a collection that has won awards at various shows. In the early 1960's I obtained a Federal firearms license, as I understood at that time that it was necessary to display at it at the gun shows.

I was advised by the BATF in the midsixties that my small volume did not warrant having a gun license, a Federal firearms license, because I was a collector. Consequently, I surrendered it at their request. That was in the midsixties.

On November 18, 1976, my home was raided by the BATF agents at 6:45 a.m. in the morning. The testimony that I submitted previously does describe some of the ordeal that I went through there, and I will not relate it at this moment.

The search warrant that they had specifically mentioned three pieces: two 410 shotguns that were new and one World War II Moser. These were pieces that I had decided to dispose of because they did not necessarily fit in the collection.

The agents proceeded to seize 70 of my guns, including 11 that belonged to my brother; a number that were made, and clearly marked, prior to 1898; my prized engraved pieces; some relatively modern collectors' pieces; and one antique oddity known as a knife-pistol.

I do not know whether or not it would be of interest to the committee at this moment, but I did borrow a couple photographs from my engraver, which I will be glad to pass around, and I have a two or three Polaroid pictures of my display and, if one looks closely, you can see the caliber of guns that I collect. I would be happy to leave the Polaroid photographs, but the others I do need to return.

Although no charges or specifics were ever mentioned, my collection was featured the next morning on the front page of the Richmond newspaper, and I was subject to complete media humiliation, including a TV crew that came to my house and photographed it.

I guess the greatest pressure today results from the family's not understanding what I have been through. That was in 1976. In February 1979 I finally received assurances from the U.S. attorney that he was declining to prosecute. This was after 2 years of repeated intimidation and pressure by the BATF to voluntarily give up my gun collection. If I did not voluntarily give it up, I was to be indicted. I refused on numerous occasions, and each time I sat and

waited for the indictment because you never know who is coming, and each time they failed to indict.

A few months would go by and they would come back. Instead of giving up the entire gun collection, the next time it was give up 56 guns. "You can have your brother's 11 back and any 3 that you want." I held my ground again and went through the agony.

They continued to do this for a period of 2 years, and they reduced the figure to 36, then 19, then 10, and then 5. Each time if I did not voluntarily give them up, I would be indicted. Each time I survived in some manner.

Under extreme pressure and concern for the strain on my family as well as my finances, and on the advice of my attorney, I finally agreed to give the originally named three pieces that they had in warrant and the knife-pistol to obtain release of the others. When I picked them up, I immediately asked that those pieces given up be retained for a reasonable period of time rather than being destroyed because I wished to pursue actions that would either allow their return or I would like to understand the reasons for their forfeiture.

The knife-pistol was a very rare item and only a few were ever made. Subsequent to the return of my collection less the four pieces, a case concerning a knife-pistol was adjudicated in a Federal appeals court in Denver, Colo. The judge ruled that this curio was rare, unique, and primarily a collector's item. There was no evidence of such curio being in the possession of anyone except collectors and museums, including the Smithsonian.

When my Congressman, J. Kenneth Robinson, inquired of the BATF about the continued retention of this piece and the others, he received a reply indicating that the BATF was familiar with the 10th Circuit Court decision but they viewed that as a singular case and maintained that knife-pistols were illegal in a gray area of the law defining "any other firearm." The other three pieces they contended were in violation of the law because I had planned to dispose of them, and therefore I would be a dealer.

I was not a dealer. I was not a dealer previously, and previously I was advised by the BATF that I was not a dealer. I was in a catch-22 situation.

I have heard nothing further from the BATF in the last year, and I am still unable to understand how an agency can make a decision when a court of law has ruled otherwise.

My gun collection was taken and no charges were ever placed, and yet I have been blackmailed, I think, out of four of my guns. I still have confidence that my Government will right these past injustices and prevent them from being repeated.

Thank you for allowing me this time, sir.

Senator GRASSLEY. Can you wait for questions?

Mr. WAMPLER. Sure.

Senator GRASSLEY. You said that the agents came to your home at 6 a.m. in the morning?

Mr. WAMPLER. Approximately 6:45.

Senator GRASSLEY. Can you describe the circumstances and how they went about doing what they did? This was at your home?

Mr. WAMPLER. Yes, sir. There was no prior warning whatsoever.

First of all, I enjoy the guns more at a show. I go to about three or four shows a year, or I used to. That is really about the only time I ever got them out. I never had anybody to my house because I don't have time.

I was awakened by knocking on the door. I am sure they had rung the doorbell, but I am a pretty sound sleeper. I finally got up and went to the door. There were four agents in the specified Government trenchcoats, so it seemed. They were accompanied by a uniformed State policeman. I later learned that he apparently was there more for appearance than anything else, just to show the uniform, because I do not think he really understood what was going on and they dismissed him after approximately 10 minutes.

They flashed I guess a rights card, a little wallet-sized card, right before my eyes, within an inch or two, and starting reading my rights. Of course, I had just awakened and was somewhat groggy.

They, in essence, told me that they had the right to dismantle my house and that they were looking for guns and, if I would cooperate, they would not do that if I would show them where they were. Even at that moment I had to realize, well, I guess there is some logic to that. I did not have anything to hide. Therefore, I told them that I kept the more expensive ones upstairs in a file cabinet that was locked and the less expensive downstairs.

They immediately went downstairs and I showed them where they were. I had nothing at all to hide. They began taking pictures of everything in my house. Of course, my wife was not too thrilled about that. She was not thrilled with the whole idea, but, you know, you go into somebody's house at 7 o'clock in the morning and start taking pictures and she's not ready for that.

They eventually cataloged them by laying all of them out in my living room. My 4-year-old daughter was now awake, and she could not understand this action at all. I think that was another pressure that I really felt, because I always had tried to teach my daughter that policemen are here to help you, and here was a uniformed policeman in my house and obviously he was not on daddy's side. That really left an impression on her.

When they eventually realized that I did not plan to offer any resistance or retaliation—in fact, I was naive enough to think that these fellows had made a mistake; they are going to take these things but they are going to bring them back later. Even though it was a real trauma at the time, I was in shock. I really felt that there was no reason for me to get that excited because they have just made a mistake.

Everybody else was excited and they stayed excited for about 2 weeks. Everybody kept advising me to go find a lawyer. Finally, I did because I began to realize they were not going to bring them back.

They stayed there until approximately 11 o'clock, I guess, cataloging. Two of them left; two of them stayed. They began to write them down, and they gave me the first sheet and asked me if that was sufficient documentation.

I said, "Well, you've written down here a .38 Smith & Wesson, but you don't indicate the fact that it happens to be engraved and has a gold inlay."

The fellow said, "Oh, we'll give you a typed sheet later. That doesn't make any difference."

I said, "Well, it doesn't make any difference to you, but it certainly would to a third party who doesn't know what an engraved gun is versus one that isn't."

Well, I was promised a typed sheet later, which I never received.

It was an experience that will go down in my mind much like December 7 does in many people's minds.

Senator GRASSLEY. Would you wait just a moment, maybe go back to your chair? I have some more questions I want to ask you, but Congressman Volkmer has arrived. Because of his tight schedule, at this time I would like to hear from my friend and former colleague from the House of Representatives from the State of Missouri, who is the prime sponsor of this legislation in the House of Representatives and a person whom I know has worked very hard not only on this legislation but on varied legislation. Particularly, I remember him as a colleague of mine on the Agriculture Committee.

We welcome you to this side of the Hill to receive your testimony on this very important piece of legislation.

Congressman Volkmer?

STATEMENT OF HON. HAROLD L. VOLKMER, A MEMBER OF CONGRESS FROM THE STATE OF MISSOURI

Mr. VOLKMER. I appreciate the opportunity to be here this morning with you. I have a prepared statement that I would like to have submitted for the record.

Senator GRASSLEY. It will be included in the record following your oral presentation.

Mr. VOLKMER. Because of the press of time, I will not go into all the details there. I am sure you are going to have sufficient witnesses here this morning who will show the press and the need for this legislation.

Basically I would just make a general statement about the philosophy behind the legislation rather than go into details of the legislation. I think it is necessary to understand that philosophy, and therefore you can understand the great demand for the legislation.

It goes back to the 1968 act, how that act was implemented, and the intent of that act. The intent of that act, being implemented by the BAFT in the beginning, during the early times, basically was to try to deny as many guns as possible to everybody, including law-abiding citizens as well as criminals; to take away as many guns as possible. It was with that philosophy that the act was being implemented.

As a result, we find many activities that were conducted, so-called in the name of the Government, that were detrimental to our private citizens.

The philosophy behind the act that is known as the McClure-Volkmer or Volkmer-McClure bill, either way, basically is a redirection of the act and a redirection to enforcement. The redirection is aimed at those who traffic in illegal guns and to go after the criminal who uses the gun.

We feel that we in society would be better served by reducing the number of crimes, by reducing the illegal use and illegal trafficking of guns, than by going after those who never use a gun in the commission of a crime, who only use a gun for legitimate purposes. We think that philosophy will better serve the country.

With that, I hope the committee will see fit in the near future to report the bill out and that it will pass the Senate quickly.

As you know, I have been unable ever since this bill has been introduced in September of 1979 to even get a hearing in the House. Even during the time when I was a member of the subcommittee which had jurisdiction on the bill, I could not get a hearing in the House on the bill, even though we had a great number of sponsors. Therefore, I welcome this opportunity for the first time to have this evidence and this testimony elicited, which does show the need for this legislation.

If you have any questions, I will be glad to answer the questions.

Senator GRASSLEY. Do the chances for getting hearings in the House appear better this Congress than last Congress?

Mr. VOLKMER. No. That is because of the philosophy of those in control of the House Judiciary Committee. It is because of their philosophy that we are not able to get a hearing—in other words, those who have the control basically do not believe that anybody should have guns; that we should not be able to hunt or do anything else with guns.

Senator GRASSLEY. Do you have more sponsors this Congress than last Congress?

Mr. VOLKMER. About the same.

Senator GRASSLEY. Would it in any way enhance the possibility of hearings or movement in the House if this bill does pass the Senate?

Mr. VOLKMER. I believe that if this bill passes the Senate then we will see movement in the House, yes. That is why I hope for early passage by the Senate. I was hoping originally that we would see it this fall, but because of the other press of other legislation on the budget, appropriations, et cetera, I can see why it did not. However, hopefully by early spring you will be able to do so. In other words, everything is resting on your shoulders over here.

Senator GRASSLEY. OK. Thank you very much, friend and colleague.

Mr. VOLKMER. Thank you very much, Senator.

[Material follows:]

TESTIMONY ON S. 1030,

THE FIREARMS OWNERS PROTECTION ACT

by

THE HON. HAROLD L. VOLKMER,

MEMBER OF CONGRESS

Mr. Chairman, Members of the Committee:

I would like to thank you for the opportunity to testify this morning in behalf of the Firearms Owners Protection Act, S. 1030 and its House Companion Bill HR 3300. As you know, Senator McClure and I are the principal sponsors of this needed legislation, cosponsored by 58 of your Senate Colleagues and 170 House members. On behalf of all supporters of this legislation, I would like to congratulate the Committee on its decision to schedule hearings.

Rather than go into specific details concerning the provisions of S. 1030 and HR 3300 I would prefer to limit myself to just highlighting some of the key points of the bill. You have a very full witness schedule before you, including a series of victims caught up in situations that this legislation will address. Their stories will be more compelling on specific points than any testimony received from me.

This legislation is needed to correct and clarify those provisions of Federal firearms laws that are vague and often inconsistent. It restores, through statutory language, fundamental rights usually associated with criminal proceedings, but for some reason, not accorded firearms owners under the existing 1968 Gun Control Act.

The vagueness, inconsistencies and omission of fundamental rights, have resulted in situations where unintentional violations of the law have allowed honest citizens to be convicted of a felony for "violation" of provisions so vague that even the current enforcing agency, the Bureau of Alcohol Tobacco and Firearms (BATF), has been unable to make up its mind what it requires.

These same vague provisions have been the source of abuses by BATF officials in efforts to build statistics to justify the agency's request in future budget and appropriations proposals.

Examples of these abuses have been documented in a series of Senate hearings beginning in 1978, held by Senator DeConcini and former Senator Bayh. I urge the Committee to review these proceedings. You will, later in these hearings, hear from "victims" of such abuses.

The legislation that Senator McClure and I have proposed aims at these very real situations. It is our goal to shift the focus of enforcement of federal firearms laws away from the regulatory nature of existing enforcement tactics, forcing BATF to concentrate their efforts against those who criminally abuse the right to bear arms. To accomplish this a series of modifications in current law is required.

Perhaps the most important reform made by this proposal is that a violation must be shown to be willful before a prosecution can be successful. This restores a fundamental principle of criminal law--that there must be unlawful intent--which for some reason was omitted from the Gun Control Act. As it stands now, any person in violation of the Gun Control Act, no matter how inadvertently, is subject to a five-year sentence in a federal penitentiary.

Also important is the provision defining "engaged in the business." The current absence of such a definition has created a complete lack of certainty as to who needs a federal firearms license and who does not. BATF, through its Director, G. R. Dickerson, has admitted the need for such a definition by soliciting comments on this subject after Senator McClure and I first introduced similar legislation in 1979. In response to my questioning as a Member of the House Subcommittee on Crime, Mr. Dickerson stated BATF was "---going to deal with it (the definition) very soon."* Unfortunately nothing has come forth from BATF to date.

This legislation also puts more "teeth" into the mandatory sentencing provision contained in the Gun Control Act. This is accomplished by an absolute denial of probation, parole, suspension of sentence, or furloughs. Current law is a "paper tiger," because a judicial means of avoiding the penalty is available. The mandatory sentencing provisions of S. 1030 will increase the sanctions against genuine criminals using guns or destructive devices.

I would like to briefly mention one other major provision in this legislation. S. 1030 provides procedural protections for our citizens from the confiscation of their property. Under the proposed legislation only those firearms actually used in a willful violation may be seized. Charges must be filed within 120 days of the seizure or the firearms msut be returned. Firearms must be returned in the event of an acquittal and attorney fees are provided if the owner is forced to sue the government for their return. These provisions will provide a reasonable protection against those situations where firearms are seized yet no criminal charges are ever brought.

Mr. Chairman, the four points I have just highlighted are just a part of the important changes this legislation makes. Other witnesses I am sure will go into more detail on these and other points. I thank you for the opportunity to appear before you this morning, and will be happy to answer any questions you may have.

*Hearings before the Subcommittee on Crime of the Committee on the Judiciary; Serial #74, July 2, 1980, page 84.

Senator GRASSLEY. Mr. Wampler, would you come back for one more question, please?

STATEMENT OF ROBERT WAMPLER, MECHANICSVILLE, VA.
[Resumed]

Senator GRASSLEY. I would like to have you describe the attitude—maybe to some extent you already have touched on this, but I would like to have you speak not so much to the physical appearance of the BATF agents coming to your home but their general attitude.

Mr. WAMPLER. The agents who appeared at my home that morning, apparently it was their first experience with this so they were probably close to as frightened as I was. They were very businesslike. That is probably the nicest way to des ribe them. One of them was maybe a little bit on the sarcastic side, but somewhat the stereotype from the TV, really.

They were not particularly abusive, just not very flexible. Well, I thought one of them was going to hold a gun on me there for a while, particularly when I told him I wanted to go to the bathroom and he started to come in with me. I said, "There are some things I do in private."

[Laughter.]

Senator GRASSLEY. What was his response to that?

Mr. WAMPLER. I think it shocked him. He allowed me to close the door in his face, which I was going to do anyway, but I wasn't sure whether I was going to get shot or not.

They were just very, very apprehensive. They apparently did not know anything about me or my character. I have never had any reason to have somebody suspect that I would be abusive or take any adverse action against them. I am not a violent person. I have never had any history of that or anything else. It was like they were watching every move. They were very tense. Maybe that is a better term. They were very tense.

Senator GRASSLEY. What was the cost to you personally to fight the BAFT?

Mr. WAMPLER. I heard you ask that question of the earlier witnesses, and I truthfully have not ever calculated it totally.

Senator GRASSLEY. Do you have some figures in mind that you could throw out, not total figures but parts?

Mr. WAMPLER. I guess somewhere between $3,000 and $5,000.

Senator GRASSLEY. Let's leave it this way: If it is not within that ballpark, send us a letter.

Mr. WAMPLER. All right.

Senator GRASSLEY. Were you ever made aware that you may be violating Federal law while engaging in the buying, selling, or trading of firearms?

Mr. WAMPLER. No, sir. As I mentioned earlier, we were initially advised—those people who went to gun shows in the midsixties—that we should have a gun license. A good number of people who went to the shows did obtain a Federal firearms license, as I did.

Senator GRASSLEY. What kind of Federal law do you believe is reasonable to protect the public, yet allowing people like yourself to buy, sell, and exchange firearms?

Mr. WAMPLER. I heard that question earlier, and I do not have an answer to it.

Senator GRASSLEY. If you have any thoughts, we would appreciate hearing from you.

Mr. WAMPLER. Sure.

Senator GRASSLEY. Thank you very much for your kind testimony.

Mr. WAMPLER. Thank you.

Senator GRASSLEY. The next witness is Richard Boulin. Is it French or is it English—Boulin?

Mr. BOULIN. French, sir.

Senator GRASSLEY. Mr. Boulin is from Monrovia, Md.

STATEMENT OF RICHARD BOULIN, MONROVIA, MD.; ACCOMPANIED BY DAVID MARTIN, COUNSEL

Mr. BOULIN. This is my attorney, Dave Martin.

Senator GRASSLEY. OK. Thank you. Welcome to the table, Dave.

Mr. MARTIN. Thank you, Senator.

Senator GRASSLEY. Are both of you going to speak?

Mr. BOULIN. I would like to testify to the actual facts of the arrest and maybe let the attorney testify as to the legal proceedings.

Senator GRASSLEY. Proceed.

Mr. BOULIN. Mr. Chairman, first of all, I want to thank you for the opportunity to testify, as this ordeal has been going on with me for 5 years. This is the first opportunity I have had to voice publicly what has happened to me.

I want to give you a little bit of my background, so that you can understand where I originated and how I came to be a victim of BATF abuses.

I originally was a French citizen. I immigrated to the United States when I was 13. I went to high school in the United States and enlisted in the U.S. Army in 1969 voluntarily, a 3-year enlistment.

During that enlistment I was able to obtain my American citizenship. At that time I volunteered repeatedly to go to Vietnam. I served two terms in Vietnam. As my military record will indicate, I received numerous awards and volunteered for numerous hazardous duty assignments.

Subject to my discharge from the Army in 1972, which was honorable—I had been promoted to the rank of sergeant at the time—I volunteered to become a Montgomery County policeman. I served as Montgomery County policeman from 1972 until 1976. During those 4 years I was awarded numerous awards within the police department for actions taken and arrests made for serious crimes, not just minor offenses.

In 1975, two policemen on my shift were killed at Montgomery Mall in Maryland. Subsequent to their death and the trauma that occurred after, my wife and I decided that I would leave the police department because she felt I owed my loyalty more to my family than I did to the police department. Also, the economics of leaving the police department were better because my father had offered me a position within his company.

I went to work for my father, who owned an air-conditioning company in Silver Spring, Md.

Senator GRASSLEY. Mr. Boulin, may I interrupt you? Senator McClure has come back from the White House. I would like to have you go back to your chair, so that Senator McClure can testify. We will call you right back just as soon as he is done.

Senator McClure, I am a cosponsor of your bill. There has been a great deal said about it. Obviously, you know the purpose of the hearing is to receive testimony on that bill. I want to compliment you for your outstanding leadership in this area.

STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator MCCLURE. Senator Grassley, I could ask for no better welcome before the committee than that. I do very much appreciate it.

If I may, I will file my full statement and not take your time and the time of the committee.

Senator GRASSLEY. It will be printed in the record following your oral presentation.

Senator MCCLURE. Mr. Chairman, the basic point that must be made is those of us who sponsor this proposed legislation to change and redirect the emphasis of the 1968 act want to see a reasonable law, an enforceable law, a law actually directed toward halting the commission of serious crime. The 1968 act did not do that. It directed itself toward the gun and the ownership of guns, and predictably led to the excesses of enforcement which have become such a blot upon the record of the country. The 1968 act has not succeeded in any measurable way in reducing the incidence of violent crime.

The bill which you, along with 57 of our colleagues cosponsor, would redirect the activities of the enforcing agency so we focus upon the violent criminal misuse of firearms rather than the legitimate ownership of firearms or on the recordkeeping, the ministerial duties of the gun dealers and gun owners of this country.

I think it was predictable that the 1968 act would fail. I think it was predictable that it would be used against the law-abiding citizen and not the law-breaking citizen. The Firearm Owners Protection Act would, in a variety of ways, redirect the emphasis away from the strawman cases to entrap innocent victims, away from the insignificant and meaningless failures to keep meticulous records away from a BATF that can get an easy record of convictions by focusing upon relatively harmless matters, and direct their law enforcement toward the violent criminal misuse of firearms.

That I hope we can get done. I hope that this legislation with the wide sponsorship that it has—Republican, Democrat, liberal, conservative; sponsors crossing the political spectrum in the Senate, will get better law enforcement and free law-abiding citizens from the misuse of the authority of an agency that has left a shameful string of abuses behind it.

Senator DeConcini, when he chaired the hearings that we held jointly, after that testimony, spoke of the "near-criminal action by our Government in harassing people who otherwise were innocent

of any wrongdoing." I think the bill that we have before us would help end that harassment.

I appreciate the opportunity to appear and testify. I appreciate the actions being taken by this committee to move toward getting the 1968 act corrected by the bill that is before us now.

Senator GRASSLEY. May I ask you a couple of questions?

Senator MCCLURE. Of course.

Senator GRASSLEY. It has been argued by some people that because the administration is considering dismantling BATF that there is no need for this bill. What is your response to that argument? Before you answer that, I thought the decision had been made. Hasn't the Department or the administration already made a decision to dismantle the BATF?

Senator MCCLURE. They already have made that decision. It has not yet been accomplished, as I recall.

Senator GRASSLEY. But it can be accomplished without Congress involvement; is that right?

Senator MCCLURE. It can be.

Senator GRASSLEY. And presumably will be.

Senator MCCLURE. Whether or not the BATF is abolished we still must solve the basic problem, which is the philosophy of the 1968 act that by focusing upon the ministerial questions, the recordkeeping questions of gun ownership and transfer you can affect criminal behavior. That is not where the problem lies. The 1968 act does not deal with the real problem.

If you change the name on the door of BATF's office and say they are not BATF anymore but something else, and you keep the same people, the same statute you will have exactly the same problem. We need a different enforcement philosophy. That may require a change of personnel as well as a change in the law.

Senator GRASSLEY. What is your opinion on whether or not your bill will allow more firearms to fall into the hands of criminals?

Senator MCCLURE. Far from it. As a matter of fact, there is no evidence that the laws we have on the books today keep a single gun out of the hand of a single criminal.

Again, it was a predictable matter, but the International Association of Chiefs of Police, sometime after the act was passed, filed a report that said, "Hmmm. Criminals don't use poor, cheap Saturday night specials; they use very good ones. When they steal, they steal the very best." I think that has been the pattern—that gun laws do not affect criminal behavior; they do not affect the behavior of the professional criminal. It only inhibits those people who do not commit crimes otherwise, anyhow. There is no relationship between the enforcement of the 1968 act and the availability of guns to those who are bent on crime. I do not believe there is any evidence at all that the law has kept guns away from the kind of criminal activity that we really are trying to deal with in the gun control legislation.

Senator GRASSLEY. If your bill is enacted, are you confident that it is going to stop the abuses of the past to which you already have referred?

Senator MCCLURE. I think Secretary Walker and the people who are working with him already have tried to move in that direction.

I think it will greatly strengthen that effort if we pass this legislation, because it will change the emphasis of the law.

We should not be fussing about whether gun dealers keep accurate records nearly as much as we should be focusing the time and talents of law enforcement people on those criminals who misuse firearms. You can spend endless manhours of time going through records without solving a single crime. We ought to be using those manhours of enforcement activity solving violent crime.

The passage of this bill will aid in criminal law enforcement.

Senator GRASSLEY. Is there any indication that the type of law enforcement agent who works for BATF is any more antigun or has any different attitude toward guns than any law enforcement agents in any other Federal department or a local police department?

Senator MCCLURE. I am not sure that I can answer that question. We have had some abuses in enforcement because the urge to show that something was being done was easily satisfied by activities that lead to statistics of arrests and convictions but do not affect actual willful criminal activity.

If they could set up a strawman sale and bust some poor, innocent gun owner somewhere, that showed up as a felony conviction just as much as if they had gotten a professional drug pusher or a professional trafficker in firearms.

The invitation was more than could be resisted by those who were trying to show that they really were aggressively enforcing the law.

I do have to say that I am very concerned about what has happened under BATF. There has been a whole string of abuses. Every witness who will appear before this committee will identify some specific abuse, abuses which would be prevented by the enactment of S. 1030.

I have filed in my testimony a number of such cases of individual abuse of the civil liberties, of law-abiding citizens in this country, abuses by misguided enforcement activity which shows contempt for lawful activity, lawful property ownership, judicial processes.

Senator, let me say that I was a county attorney for 6 years. I started out my public service as a law enforcement officer for 6 years at the county level. I also was a city attorney for 13 years. In that work I enforced the criminal ordinances of my city. I spent the first several years of my professional lifetime on the side of law enforcement officials, and it distresses me to have sit in any forum anywhere and be critical of the people who enforce our criminal laws, but I have to be critical of what BATF has done, the agents that they have had, the way that they have enforced the law, and the way they have abused people in the enforcement of the law.

I cannot begin to describe the distress that I have, and that others have, when we see good, honest citizens of this country who have been harassed and wronged and broken by the activities of law enforcement in this country, for doing nothing wrong.

For example, we have seen the strawman sale. The BATF agents go before a gun dealer with somebody who has identified himself as being from out of State and ask to buy a firearm. That is against the law. The gun dealer says, "I'm sorry; I cannot sell it to you. That is against the law."

Then the agent's companion who came in with him steps forward and identifies himself as being a resident of the State in which the transaction was taking place. He is lawfully qualified to buy the gun, and he makes the purchase. Immediately after the purchase is completed, the two identify themselves as agents of the Bureau of Alcohol, Tobacco, and Firearms and say, "Although you sold this gun to somebody who was legally entitled to purchase it, the sale was really for the benefit of that other person who was not legally entitled to purchase and, therefore, Mr. Gun Dealer, you are guilty of a felony."

Some strawman cases were thrown out of court. We have some very strong court statements by judges against strawman sales. Yet, even though those cases were thrown out of court, the BATF confiscated the entire stock-in-trade of the gun dealer, and refused to return it. After an acquittal or after the case was thrown out in court, the BATF would then take administrative action to rescind the gun dealer's license. Even if that were not successful, they still would not return the personal property that had been seized.

We could give you case after case after case of this kind of activity, which unfortunately went on for far too long. We could give you the examples of people who asked the BATF if they had to be licensed as a gun dealer in order to sell or trade guns in their own personal collection. The BATF would say, "Oh, well, if they are just a few sales in a year, you don't have to be licensed." Yet, people who sold just a few were then arrested for dealing without a license.

Others, seeing arrests made for dealing without a license in those circumstances, asked for a gun dealer's license, and BATF refused to give them a license because they were not selling enough to be qualified to be a dealer.

That is one of the abuses that S. 1030 proposed to address very directly by defining who is and who is not a gun dealer; who is required to have a license to engage in that business.

A whole host of unjust, unconstitutional activities have sprung out of a faulty statute misdirected and overzealous enforcement by people who were too anxious, who liked to use their authority, and certainly did abuse the civil rights of firearms owners and dealers. The Firearms Owners Protection Act would prevent further abuses.

Senator GRASSLEY. Thank you, Senator McClure. We appreciate your testimony.

Senator MCCLURE. Thank you, Senator.

[Prepared statement of Senator James A. McClure follows:]

Testimony of U.S. Sen. James A. McClure
On S. 1030, The Firearms Owner Protection Act

It has been 13 years since the Gun Control Act of 1968 was signed into law.

Hailed by its proponents as a marvel for controlling crime, it has not only failed in its lofty purpose, but has instead created a grim enforcement history of abuses to the rights of American citizens. The abuses are legion, and can only be corrected by major changes in the Gun Control Act of 1968.

Redrafting and reforming the Federal gun control statutes is in itself a civil liberties issue clearly recognized by a majority of the U.S. Senate and nearly one third of the House of Representatives.

The legislation that is the subject of this hearing -- S. 1030, The Firearms Owner Protection Act -- has 58 co-sponsors in the U.S. Senate. That support is politically ecumenical, offered from the entire spectrum of philosophy in the Senate. I suspect that the support of my colleagues can be explained very simply: the reforms in S. 1030 are good, right and long overdue.

When the Congress enacted the Gun Control Act of 1968, a promise was made to the American people that the new law would not "place any undue Federal restrictions or burdens on law-abiding citizens ..."

That promise was never kept, nor could it have been kept, because of the very <u>nature</u> of the law.

The 1968 Gun Control Act has been accurately described as "legal flypaper that not even competent lawyers claim to understand." It is nearly unique among Federal criminal statutes, requiring no scienter, and with any and all violations being subject to Federal felony sanctions.

Furthermore, everything in the act is malum prohibitum. Certain conduct by citizens is illegal simply because the government says it is. There is virtually no provision of the

GCA 68 WHICH COVERS REAL CRIMINAL CONDUCT BY REAL CRIMINALS. INSTEAD THE LAW HAS CREATED CRIME FROM OTHERWISE INTRINSICALLY INNOCENT ACTS AND HAS CREATED A WHOLE CLASS OF CRIMINALS FROM THE BODY OF OUR CITIZENRY.

WHAT CONSTITUTES MALUM PROHIBITUM CRIMINAL OFFENSES UNDER THE GUN CONTROL ACT IS EITHER VAGUE OR HAS BEEN OFTEN LEFT TO THE DESCRETION OF THOSE ENFORCING AND PROSECUTING THE LAW. UNITED STATES CIRCUIT COURT JUDGE ROBERT F. CHAPMAN HAS DESCRIBED THE GCA 68 AS CONTAINING "A GREAT DEAL OF AMBIGUOUS LANGUAGE WHICH OBVIOUSLY RESULTED FROM THE HASTE WITH WHICH THIS LAW WAS PASSED ...." FURTHER, JUDGE CHAPMAN HAS WRITTEN THAT "INTERPRETATIONS HAVE BEEN REQUIRED FROM VARIOUS COURTS MAKING IT OBVIOUS THAT PROSECUTORS, DEFENSE ATTORNEYS, TRIAL JUDGES AND OTHERS HAVE NOT FULLY UNDERSTOOD OR CORRECTLY INTERPRETED THE LAW."

IF THOSE SCHOOLED IN THE LAW CANNOT UNDERSTAND IT, WHAT ABOUT THE ORDINARY CITIZENS WHO ARE SUBJECT TO FELONY PROSECUTION FOR EVEN THE MOST MINISCULE TECHNICAL VIOLATIONS? THE ANSWER IS IN THE GRIM STATISTICS WHICH HAVE BEEN MOUNTING AT THE EXPENSE OF THOSE ORDINARY CITIZENS ENSNARED BY THEIR GOVERNMENT. CLEARLY, MOST OF THOSE WHO HAVE BEEN PROSECUTED BY THE ENFORCING AGENCIES OF THE GCA 68 HAVE ONE THING IN COMMON -- THEY ARE PEOPLE NEVER BEFORE IN TROUBLE WITH THE LAW, GUN COLLECTORS, GUN DEALERS WHO NEVER UNDERSTOOD THE CRIMINALITY OF THEIR CONDUCT, AND WHO NEVER INTENDED TO VIOLATE THE LAW.

THE GUN CONTROL ACT OF 1968 -- WITH ITS FELONY PENALTIES AND LACK OF ANY SCIENTER -- IS A LAW WHICH INVITES ABUSE. IT IS A LAW PERFECTLY DESIGNED TO MAKE ANY ENFORCING AGENCY LOOK GOOD ON A RECORD OF EASY, RISKLESS, PURELY STATISTICAL FELONY ARRESTS AND, UNFORTUNATELY, FELONY CONVICTIONS.

THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS HAS USED THE LAW JUST TO SUCH AN ADVANTAGE, AND FOR THE MOST PART, IT HAS GOTTEN AWAY WITH CONDUCT WHICH MY COLLEAGUE SENATOR DECONCINI CHARACTERIZED AS "BORDERING ON CRIMINALITY."

BUT THE DEPARTMENT OF JUSTICE IS EQUALLY CULPABLE AND MUST EXCEPT A LARGE SHARE OF RESPONSIBILITY FOR CIVIL LIBERTIES ABUSES COMMITTED UNDER THE PROVISIONS OF THE 1968 GUN CONTROL ACT. FEDERAL PROSECUTORS ROUTINELY HAVE PRESSED AHEAD WITH CASES THAT SHOULD NEVER HAVE BEEN BROUGHT BEFORE ANY GRAND JURY, AND THEY HAVE PROSECUTED THOSE CASES WITH A VERY REAL POLITICAL ZEAL. THIS IS GUN CONTROL, AND, IN A SENSE, MANY DEALERS AND COLLECTORS WERE PROSECUTED FOR THEIR POLITICS -- FOR THEIR BELIEF IN FIREARMS OWNERSHIP.

THE ADMINISTRATION HAS RECENTLY ORDERED THE ABOLITION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS -- IN LARGE MEASURE BECAUSE OF THE INCREASING PUBLIC AWARENESS OF ITS MISCONDUCT IN ENFORCING THE GUN LAW. ALTHOUGH LAUDABLE, THE ORDPARTMENT OF JUSTICE IS EQUALLY CULPABLE AND MUST EXCEPT A LARGE SHARE OF RESPONSIBILITY FOR CIVIL LIBERTIES ABUSES COMMITTED UNDER THE PROVISIONS OF THE 1968 GUN CONTROL ACT. FEDERAL PROSECUTORS ROUTINELY HAVE PRESSED AHEAD WITH CASES THAT SHOULD NEVER HAVE BEEN BROUGHT BEFORE ANY GRAND JURY, AND THEY HAVE PROSECUTED THOSE CASES WITH A VERY REAL POLITICAL ZEAL. THIS IS GUN CONTROL, AND IN A SENSE, MANY DEALERS AND COLLECTORS WERE PROSECUTED FOR THEIR POLITICS -- FOR THEIR BELIEF ON FIREARMS OWNERSHIP.

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THIS ADMINISTRATION IS KEENLY SENSITIVE TO THE ISSUES OF CIVIL LIBERTIES ABUSES OF FIREARMS OWNERS, BUT ANOTHER ADMINISTRATION MAY WELL IGNORE OR EVEN ENCOURAGE SUCH ABUSES.

THE LAW MUST BE CHANGED.

MY BILL IS INTENDED TO PROVIDE A STATUTORY END TO A SERIES OF WELL-DOCUMENTED ENFORCEMENT ABUSES. IT IS INTENDED TO PROVIDE

LASTING FUTURE PROTECTION FOR OUR CITIZENS WHO WISH TO EXERCISE THEIR RIGHT TO OWN FIREARMS. IT IS DESIGNED TO REDIRECT THE EFFORTS OF FEDERAL AUTHORITIES TO THE PURSUIT OF REAL CRIME AND REAL CRIMINALS.

FOR THE RECORD AND FOR THE COMMITTEE, I AM ALSO SUBMITTING A BRIEF DESCRIPTION OF MAJOR POINTS OF REFORM INTENDED UNDER S. 1030.

S. 1030 WOULD MAKE UNIFORM THE CLASSES OF "PROHIBITED PERSONS" WHO CANNOT BUY OR OWN FIREARMS.

IT WOULD COMBINE THE CLASSES NOW FOUND IN THE TWO SECTIONS, ELIMINATING BOTH OVERLAP AND INCONSISTENCY. SEVEN CLASSES OF PERSONS WOULD BE BARRED FROM ALL RECEIPT AND POSSESSION OF FIREARMS; THE SAME RULE ON PARDONS, EXPUNGEMENT, AND RESTORATION OF CIVIL RIGHTS WOULD APPLY TO ALL. "CONVICTION" WOULD BE AS DEFINED BY THE LAW OF THE JURISDICTION WHERE THE PERSON WAS CHARGED.

S. 1030 WOULD STRENGTHEN THE CRIMINAL SANCTIONS AVAILABLE AGAINST THOSE WHO USE FIREARMS IN THE COMMISSION OF FEDERAL OFFENSES.

IT WOULD NOT ONLY APPLY THE MANDATORY SENTENCE FOR A FIRST OFFENSE, BUT WOULD PROHIBIT PERSONS SO SENTENCED FROM BEING PAROLED OR FURLOUGHED DURING THE MANDATORY SENTENCE PERIOD. IN ADDITION, THE BILL EXPLICITLY EXEMPTS FROM THE MANDATORY SENTENCE THOSE WHO USE A GUN FOR SELF-DEFENSE. IT THUS INCREASES THE SANCTIONS AGAINST GUN-USING CRIMINALS.

S. 1030 WOULD LIMIT THE ENFORCEMENT AGENCY'S ABILITY TO PURSUE PEACEFUL AND HONEST CITIZENS IN AN ATTEMPT TO ACCUMULATE "ARREST STATISTICS."

IT WOULD REQUIRE PROOF OF A "WILLFUL" VIOLATION IN ORDER TO CONVICT. INNOCENT INTENT WOULD THUS BE A DEFENSE TO A PEACEFUL AND HONEST CITIZEN SO THAT FEDERAL AUTHORITIES WOULD NOT BE AS ABLE TO FOCUS THEIR ATTENTIONS ON SUCH CITIZENS.

S. 1030 WOULD EXPLICITLY DEFINE THE TERM "ENGAGED IN THE BUSINESS" OF DEALING IN FIREARMS.

GCA '68 REQUIRES EVERY PERSON "ENGAGED IN THE BUSINESS OF DEALING" IN GUNS TO OBTAIN A FEDERAL LICENSE. ANYONE WHO FAILS TO COMPLY COMMITS A FEDERAL FELONY, EVEN IF HE DOES SO UNINTENTIONALLY. BUT THE STATUTE FAILS TO EXPLICITLY DEFINE "ENGAGED IN THE BUSINESS." BATF HAS FREQUENTLY ABUSED THIS PROHIBITION TO ENTICE HONEST GUN COLLECTORS INTO SELLING TWO, THREE, OR FOUR GUNS FROM THEIR COLLECTION, IN ACCORD WITH ALL OTHER LAWS, AND THEN CLAIM THAT THE COMBINATION OF SALES CONSTITUTED BEING "ENGAGED IN THE BUSINESS." YET BATF HAS ALSO REFUSED TO ISSUE LICENSES TO PERSONS WHO LIKEWISE SELL ONLY A FEW GUNS FROM THEIR COLLECTION, CLAIMING THAT THEIR RESOURCES WOULD BE OVERSTRETCHED BY HAVING TO INSPECT SO MANY LICENSEES. MANY COLLECTORS HAVE THUS BEEN RUINED.

MY LEGISLATION WOULD EXPLICITLY DEFINE "ENGAGED IN THE BUSINESS" TO INCLUDE ONLY THOSE WHO DEVOTE EFFORT TO REPETITIVE GUN SALES FOR THE PRIMARY PURPOSE OF MAKING A LIVELIHOOD AND PROFIT. COLLECTORS AND HOBBYISTS WHO OCCASIONALLY SWAP OR SELL INCIDENTAL TO THEIR HOBBY WOULD NOT BE WITHIN THE DEFINITION.

S. 1030 WOULD NARROW THE RESTRICTIONS ON INTERSTATE FIREARMS SALES SO THAT A CITIZEN MAY TRANSFER A FIREARM TO SOMEONE WHO RESIDES IN A DIFFERENT STATE, AND THE RECIPIENT MAY BRING IT INTO HIS STATE, ONLY IF: (1) BOTH ARE PERMITTED TO RECEIVE AND POSSESS UNDER FEDERAL LAW; (2) THE TRANSFER IS LEGAL IN THE STATE WHERE THE RECIPIENT RESIDES; AND (3) THE TRANSFER IS ALSO LEGAL IN THE STATE WHERE IT OCCURS. IF THE TRANSFER WOULD VIOLATE FEDERAL LAW, THE LAW OF THE STATE WHERE THE RECIPIENT RESIDES, OR THE LAW OF THE STATE WHERE THE TRANSACTION OCCURS, IT WOULD CONSTITUTE A FEDERAL CRIME. THUS THE LAW WOULD BAN INTERSTATE EVASION OF LOCAL GUN LAWS, BUT NOT PREVENT TRANSFERS WHERE THERE ARE NO LAWS TO BE EVADED.

S. 1030 WOULD BAR REPETITIVE HARASSMENT OF CITIZENS WHO HAVE PROVEN THEIR INNOCENCE.

THE BILL WOULD PROVIDE THAT WHERE A CITIZEN IS ACQUITTED BY JURY, THE CASE DISMISSED OR OTHERWISE ENDED IN HIS VINDICATION,

THE SAME CHARGE MAY NOT BE USED TO FORFEIT HIS PROPERTY OR REVOKE HIS LICENSE. MOREOVER, WHEN GUNS ARE SEIZED, CHARGES MUST BE BROUGHT WITHIN 120 DAYS. THIS WOULD ELIMINATE ABUSES SUCH AS THE ONE WHERE BATF WAS STILL WITHHOLDING RARE COLLECTOR'S ITEMS TWO AND A HALF YEARS AFTER THE SEIZURE, WITHOUT FILING A SINGLE CHARGE.

S. 1030 WOULD ENSURE THAT THE BURDEN OF AN UNJUST OR HARASSING ACTION RESTS WITH THE GOVERNMENT, NOT WITH THE INNOCENT VICTIM.

THE BILL WOULD PROVIDE THAT A JUDGE SHALL AWARD A REASONABLE ATTORNEY'S FEE TO THE VICTIM OF HARASSMENT IF HE SECURES THE RETURN OF SEIZED PROPERTY BY RESORT TO A COURT. IF THE GOVERNMENT HAS DEPRIVED A CITIZEN OF HIS OWN PROPERTY, AND CANNOT DEFEND THAT DEPRIVATION, IT SHOULD BEAR THE BURDEN -- NOT THE INNOCENT CITIZEN. MOREOVER, THE FEDERAL DISTRICT JUDGE WOULD BE REQUIRED TO AWARD ATTORNEY'S FEES IN ANY OTHER PROCEEDING WHERE THE PROCEEDING WAS BROUGHT MALICIOUSLY OR WITHOUT JUSTIFICATION. ONCE AGAIN, IF A FEDERAL AGENCY CANNOT CONVINCE A FEDERAL JUDGE THAT IT HAD A BASIS FOR INITIATING AN ACTION, THERE IS NO REASON THE INNOCENT VICTIM SHOULD BEAR THE COSTS OF PROVING HIS INNOCENCE. CONGRESS HAS, IN THE PAST, EXTENDED SIMILAR PROTECTIONS TO PERSONS WHO HAVE BEEN SUBJECTED TO IRS HARASSMENT OR DEPRIVATION OF CERTAIN CIVIL RIGHTS; GIVEN THE EGREGIOUS RECORD OF BATF, THERE IS AMPLE JUSTIFICATION TO EXTEND THIS PROTECTION HERE.

S. 1030 WOULD CLARIFY THE REQUIREMENTS OF THE LAW BY PROVIDING EXPRESSLY THAT A DEALER MAY SELL FROM HIS PRIVATE COLLECTION AS WOULD ANY OTHER PRIVATE CITIZEN, SUBJECT TO ALL OTHER REQUIREMENTS OF THE ACT (NO SALES TO FELONS, IN VIOLATION OF STATE LAW, ETC.).

S. 1030 WOULD REQUIRE AGENTS TO HAVE REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF LAW HAD OCCURRED AND THAT EVIDENCE OF SUCH A VIOLATION MAY BE FOUND BEFORE MAKING SUCH A WARRANTLESS ENTRY. (NOTE: BATF HAS RECENTLY CLAIMED TO HAVE ADOPTED THESE

REQUIREMENTS AS A POLICY; ENACTMENT INTO LAW WILL ENSURE THAT THIS POLICY IS ADHERED TO.)

S. 1030 SETS A MINIMUM COMMENT PERIOD FOR THE ISSUANCE OF REGULATIONS, PROVIDES THAT EITHER HOUSE OF CONGRESS MAY OVERRIDE A REGULATION BY APPROPRIATE RESOLUTION, AND REQUIRES THAT THE REGULATION BE NECESSARY, RATHER THAN "REASONABLY NECESSARY" AS DETERMINED BY BATF.

S. 1030 WILL ELIMINATE LOCAL HARASSMENT OF GUN OWNERS TRAVELING THROUGH STATES WHERE THEY DO NOT RESIDE.

UNDER EXISTING LAW, A PERSON TAKING HIS FIREARM WITH HIM BY AUTOMOBILE MAY HAVE TO PASS THROUGH STATES WHICH HAVE GUN LAWS DIFFERENT FROM THOSE IN HIS OWN STATE. HE MAY GO FROM A STATE WHICH HAS NO PERMIT REQUIREMENT INTO ONE THAT DOES; OR HE MAY HAVE A PERMIT IN HIS OWN STATE BUT NOT IN THE STATES THROUGH WHICH HE WILL DRIVE. INDEED, UNDER MOST STATE AND LOCAL LAWS NON-RESIDENTS CANNOT OBTAIN A PERMIT. HE MAY THUS BE SUBJECT TO PROSECUTION EVEN THOUGH HIS FIREARM IS KEPT SAFELY STORED WHERE IT COULD NOT BE MISUSED, AND PUNISHED EVEN WHERE THE LAW WOULD NOT ALLOW HIM TO COMPLY.

UNDER S. 1030, SUCH A PERSON MAY TRANSPORT A FIREARM THROUGH SUCH A STATE, PROVIDED (1) THE GUN IS UNLOADED AND (2) IT IS STORED SO AS NOT TO BE READILY ACCESSIBLE. THIS PROTECTS BOTH THE LOCAL GUN LAWS AND THE LEGITIMATE SPORTSMAN.

There can be no more meaningful illustration of the effects of a bad law than the testimony of its victims. In each case, honest people have had their lives and businesses disrupted and their Constitutional rights abused. The reforms stipulated in S. 1030 will prevent further such offenses against the rights of American citizens. I am proud to introduce these people to you, for I know that the stories they tell will make the need for federal firearms law reform all the more vivid.

Vindictive pursuit. For this abuse, there is no better illustration than Paul and Billie Hayes of Basque Farms, New Mexico. They were set up on a series of straw man sales, indicted, tried, and acquitted by a jury which was out but seven minutes.

Their prosecution on criminal charges (which began with their arrest on April 26, 1978), was followed by an administrative action commenced on June 28, 1979 in which BATF denied renewal of their federal firearms license, based on the original criminal charges of which they were acquitted. Following an August 15, 1979 hearing, their license was renewed October 17, 1979.

Subsequent to that action, BATF sought forfeiture of 171 of the Hayes' firearms, their entire stock-in-trade, which had been seized at the time of their 1978 arrest. The forfeiture action was taken against the Hayes with great reluctance by the federal prosecutor who informed BATF that there was little good reason to move against the Hayes as their license had been renewed.

The forfeiture action was not litigated, however, as the prosecutor dismissed it after the court ruled that the BATF agents had reasonable cause to seize the Hayes' firearms. Consequently, the Hayes' guns were returned on September 29, 1981, more than 2½ years after their acquittal. The Hayes' have spent in excess of $20,000 in legal fees.

Seizures of property not involved in alleged violation of law. Although the Hayes case also involved seizures of firearms by resort to the phrase "intended to be used" in violation of the law, the best testimony regarding totally unfounded search and seizure by the BATF (permitted by the statute) is Robert Wampler, a registered pharmacist from Richmond, Virginia.

Wampler, a gun collector, was the subject of a BATF raid on his home November 18, 1976. Although Wampler was not charged with any crime, BATF seized 70 firearms from his collection -- many pieces of which were priceless collector's items.

Several weeks after the raid, Mr. Wampler's attorney requested return of his client's gun collection. The U.S. Attorney's Office said that if Mr. Wampler voluntarily forfeited his 70 guns, no criminal charges would be brought. (The charge would have been "engaging in the business" without a license.) Mr. Wampler refused the deal and awaited the threatened action through the January 1977 session of the federal grand jury. No indictment resulted, however, and the U.S. Attorney's Office made a new offer -- no charges if 50 guns were given up.

One month later, the offer became 36 guns. One year following the raid, Mr Wampler asked for a meeting with the U.S. Attorney's Office which resulted in a fourth offer -- no charges if he forfeited 19 guns.

In September of 1978, the number was pared down to 5 pieces, and finally in November 1978, Wampler reluctantly agreed that he would give up a WW II Mauser pistol, two .410 guage shotguns and an an antique knife-pistol, an item which BATF claimed was a prohibited item under Title II of GCA '68. Mr. Wampler asked that the offer be put in writing and that it also preclude any civil action.

Finally, in March of 1979, the agreement was forthcoming. Yet BATF officials in Northern Virginia, who had possession of Mr. Wampler's gun collection, refused to return his property until May 29, 1979.

Mr. Wampler's four guns are currently residing in BATF's museum. Since the forfeiture of the knife-pistol, one federal court of appeals has declared that such an item should be declared a "curio and relic" and thus be legal for private ownership. Mr. Wampler is currently seeking return of that item.

Felony charges requiring no element of intent and internal lawmaking. Richard Boulin, a Vietnam veteran, and former Montgomery County, Maryland police officer, was a federally licensed firearms dealer and a collector of high grade commemorative firearms.

Boulin's home was raided by 13 BATF agents on December 14, 1977 and his entire collection of 89 guns seized. During the raid, his guns, most of which were unfired and in mint condition, were considerably damaged and abused. Boulin was charged with selling seven firearms from his private collection without entering the transactions in his federal dealer's records.

The case was heard before U.S. District Court Judge Herbert F. Murray on June 9 and June 19, 1979. Mr. Boulin's assertion--that he was told by BATF inspectors that an off-paper transfer of private guns to another

Maryland resident was legal -- was challenged by the government. Of the seven firearms sold, six were owned prior to Boulin's receiving his license; the seventh firearm had been purchased through the license, but had been transferred by Boulin to himself as an individual is permitted by BATF rulings.

On August 6, 1979, eleven months after his original court appearance, Mr. Boulin was found guilty by Judge Murray who said he had made that finding with "great reluctance," because "the court has found Mr. Boulin to be an uncommonly cooperative defendant whose involvement in this case has been an isolated act of wrongdoing in an otherwise lawful and productive career." The judge specifically said Mr. Boulin had never had any intent to violate the law, but that the statute, the Gun Control Act of 1968, requires no element of intent.

The question of the criminality of the acts of which Mr. Boulin was "reluctantly" convicted, has been raised in a post-conviction petition to Judge Murray to which the judge has not yet responded. In that petition, Boulin points out to the court that just one week before Boulin's conviction, the acting director of BATF, John G. Krogman, answered a query from Sen. S.I. Hayakawa in specific reference to the Boulin situation. Krogman wrote: "BATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records." In short, the acting director was telling the Senator that there was no crime in doing what Boulin did.

Yet the new director, following Krogman, G.R. Dickerson, then informed the court that the Krogman policy was "in error."

Since making that statement, Mr. Dickerson has reversed himself. In a November 1980 issue of Shooting Industry Magazine, Dickerson said, "It happens sometimes, that a licensed firearms dealer will also make sales at gun shows [exactly what Boulin did] with what he considers his own personal collection. If it really is his own personal collection, there is not a damned thing wrong with that under the law."

Subsequent to that statement, Dickerson may have again reversed the policy by stating in a letter to U.S. Sen. Robert Byrd: "Licensed dealers are required to make sales only from their licensed premises and may not display and sell firearms away from these premises.

Strawman - interstate sales prohibition. A key witness in any examination of the strawman scheme should be David Berry, a federally licensed dealer from Spartansburg, South Carolina.

Previous to his January 1976 conviction in connection with "strawman" sales of two firearms, Mr. Berry had an impeccable record of personal conduct. He was a South Carolina State Constable with a good working relationship with the State Law Enforcement Division, and the Spartansburg City and County Police Departments.

Mr. Berry was one among some 35 dealers "tested" by BATF in a series of "strawman" cases in South Carolina. In the typical strawman case, a dealer is approached by a BATF agent posing as an out-of-state resident. Under the Gun Control Act of 1968, it is a felony for a dealer or individual to sell a firearm to a resident of another state. When the dealer refuses such a sale, another agent, who meets the residency requirements, buys the gun. The dealer is arrested and charged with selling to a non-resident.

Mr. Berry maintained throughout that the sales in question were legal. Following his conviction, Mr. Berry, who lost his business and suffered a loss of his reputation in his community, sought to have his conviction overturned by the court based upon erroneous jury instructions, a motion the court granted. Mr. Berry is currently seeking to have all records of his arrest and conviction expunged.

The South Carolina "strawman" sweep ended abruptly when U.S. District Court Judge Robert F. Chapman, ordered BATF to inform all federally licensed dealers in the state as to their interpretation of the law with regard to "strawman" sales and refused to hear any further cases until BATF gave such an explanation to dealers. BATF complied and no further cases were brought in South Carolina.

In his January 10, 1979 order setting aside David Berry's strawman conviction, Judge Chapman wrote that defendants in the South Carolina "strawman" cases, particularly Berry, did not understand the illegality of a straw sale ..."

In setting aside David Berry's conviction, Judge Chapman said the GCA '68 "contains a great deal of ambiguous language, which obviously resulted from the haste with which this law was passed... The law has required numerous appeals, and interpretations have been required from various courts making it obvious that prosecutors, defense attorneys, trial judges and others have not fully understood or correctly interpreted the law." Judge Chapman is now sitting on the U.S. Court of Appeals for the Fourth Circuit.

A major omission in the Gun Control Act of 1968 is the lack of any Federal preemption to protect citizens travelling in interstate commerce from prosecution under restrictive state firearms laws. A few of those laws, such as New Jersey's, Massachusetts', and New York's firearms owner licensing statutes, have the effect of prohibiting lawful transportion of firearms by individuals through those states. S. 1030 would provide such preemptive protection.

On August 27, 1980, Mr. Preston Brown of Jacksonville, North Carolina was travelling from his home, in covoy with two friends, to a scheduled bear hunt in Maine. He had with him his prized hunting dogs and four firearms.

Three of the guns -- two rifles and a shotgun, which he carried openly on a rack in the cab of his pickup -- were seen by a state trooper patrolling the New Jersey Turnpike. The trooper pulled Mr. Brown to the side of the road, approached the pickup with sidearm drawn, and arrested Brown since the New Jersey statute provides no method by which a non-resident may travel through the state. When his hunting companions stopped to see what the trouble was, they were arrested and handcuffed as well.

The North Carolinians were taken before a magistrate, then jailed, and Mr. Brown's pickup was impounded with the dogs still locked in the camper. During the night one of the animals suffocated.

In the morning, Mr. Brown and his friends were released on $1,100 bond apiece, and they learned that the dogs had been taken to a shelter. It cost Mr. Brown over $600 to gain release of his dogs, and an additional $175 for the return of his pickup from an impoundment garage.

Following considerable legal expenses, the charges against Mr. Brown were dropped; the seized hunting guns, which had been held by the state police, were not returned until nine months after the incident.

Engaging in the business of dealing in firearms without a license. Edwin D. Phillips, who lives in Vinton, Virginia, was indicted in April, 1977 for engaging in the business of dealing in firearms without a license for selling three firearms and tried in June, 1977. He was found guilty and fined $1,500 and sentenced to two years probation. Phillips was then and is now an electrical contracor.

Phillips has been interested in Civil War history for some 25 years and has collected Civil War guns. He had attended numerous gun shows, but had only rented display tables at four such shows. Phillips usually displayed two or three antique guns, two or three modern guns, and some Civil War relics at the shows. He would also display some tooled leather material. He has never owned more than 13 guns at any one time, mostly antiques. Before displaying the first time, he inquired of the "man in charge"

(name not recalled) of the BATF office in Roanoke about any regulations prohibiting selling or trading guns at the shows and had been told there would be no problems in selling firearms to the extent he planned.

In 1976, at a Roanoke gun show, he sold two Model 1911 .45 caliber semi-automatic pistols, and at a Richmond show sold a .25 caliber pistol which was very old, but could not be determined to be an antique. It turned out that these had been purchased by undercover BATF agents. Phillips was later in the Richmond area hunting and learned that another individual's home had been raided and upon returning to Vinton, learned that BATF agents had inquired of neighbors about him. He recalled that subsequent to the sale of the .25 caliber gun at Richmond, he had been called and asked whether or not he had additional guns for sale. He advised the individual he did have guns in his home and now understands that his conversations were taped at this time.

He heard nothing further until he was called by the Probation Office in Roanoke and was informed he had been indicted. Convinced he had done nothing wrong, he hired a lawyer, Richard Lawrence, to represent him. This attorney at first appeared interested in the case, assuring him nothing would come of it, but later appeared to lose interest and wanted Phillips to plea bargain with the Government. Phillips refused to go along with his attorney's advice and stood trial.

Phillips is very upset that as a result of attending gun shows, which he felt was a social and releasing diversion from his business, he is now a convicted felon, suffering all the attendant notoriety and loss of rights. Phillips had never had any difficulty before or since with BATF or any other law enforcement agency. He has never been a firearms dealer and has never applied for a dealer's license. Since his conviction, Phillips has had his civil rights restored by the governor of Virginia.

Senator GRASSLEY. Mr. Boulin, would you come back to the witness table, please, and continue where you left off?

STATEMENT OF RICHARD BOULIN, MONROVIA, MD., ACCOMPANIED BY DAVID MARTIN, COUNSEL [Resumed]

Mr. BOULIN. Thank you, Mr. Chairman.

I think the point that I was trying to make is I had 7 years of law enforcement experience. I was a criminal investigator in the Army and had worked undercover. My experience with the law enforcement agencies is quite extensive.

In 1975, while still a Montgomery County policeman, I decided to obtain a Federal firearms license. I had been collecting firearms privately since 1968 and had acquired a fairly substantial collection, which I was very proud of.

In 1975 my purpose for applying for an FFL was that I felt with my background in firearms and my knowledge of firearms that I could sell firearms to policemen, Secret Service agents, FBI agents, and people that I had contact with, and make an extra income on the side.

I obtained a Federal license, a State license, a State license to carry a handgun just in case my police powers did not grant that. I also obtained permission from my employer, which was the Montgomery County Police Department, to transact business in firearms.

In 1976, after the death of the two policemen on my shift, when I left the police department and I was going to go to work for my father, one of the conditions was that I would get rid of my FFL license because he felt that I could not devote my full-time attention to this new position he was giving me and also run a side business. As I was working for my father the first year, in 1976 and 1977, I was in the process of disposing of the inventory that I had accumulated.

December 14, 1977, at 10 o'clock in the morning as I was leaving my father's agency in order to go out and supervise the crews for which I was responsible, I observed a Montgomery County police car entering our private drive. Obviously knowing the officer in the car from the department when I had worked there, I stopped my vehicle, got out of the car, and asked the officer if I could help him. He stated to me that he was coming to get a business alarm card, which I was quite familiar with. I said, "I will be glad to help you fill it out," and parked my car.

As I was getting out of my car, about six to seven unmarked police cars pulled in at a high rate of speed going in every direction, and three or four more Montgomery County police cars. Of course, that shocked me, to say the least. I did not have any idea what was going on.

The first thing that came to my mind initially when I saw the cars come in was that it was immigration because we employed a lot of personnel there in blue-collar-type employment.

As the agents got out of the cars I saw their lapels with their BATF badges and right away recognized who they were from my law enforcement experience. They ran up to me. They asked me, "Are you Richard Boulin?" I said, "Yes, sir."

The next thing I knew I had a gun to the back of my head. I was shoved abruptly by two BATF agents up against the car where I hit this part of my head [indicating chin]. They had my arms behind my back, and they told me, "If you move, we'll blow your head off." I obviously did not move, to say the least. I cooperated with them fully.

They handcuffed me behind my back. They checked my body for any firearms or weapons of any type, which I had none. They paraded me back into my dad's business in full view of everyone. They started to come in with approximately 10 to 15 people. Without identifying themselves, without saying anything to anybody, they basically started going through the building.

At this time they forced me into my dad's office, which was the first office to the right adjacent to the doorway, and locked me in there with two agents.

I repeatedly asked what I was being arrested for. I was refused an answer. They removed my wallet, all my personal belongings from my body.

I could hear the yelling and the screaming throughout the entire place of business because they were yelling at people to get out of the way and do this and do that.

I had brought my wife in for 1 day as a temporary secretary to help because we were backlogged in some of our direct mail campaign. I asked to see my wife, and I was refused that.

I asked again to know what I was charged with, and I was refused that. I asked if my personal property could be given to my wife. They finally granted me that after several pleas.

They asked me if there were any firearms stored in the premises. I explained to them absolutely none under any circumstances. It was a place of business and not a place of firearms.

They started questioning all the employees to the point where the employees not only refused to cooperate with them, but actually became belligerent with the agents because of their attitude.

At that time I was put into the back of a BATF car, my hands cuffed behind my back and seatbelted in. With my size, I think you can imagine it is not a very comfortable situation.

I was driven 30 miles to my home, handcuffed behind my back, in traffic, to the point where I hate to be impolite but I was almost going to vomit. I had to ask them several times to wind the window down. They refused to move my hands back to my front.

While we were proceeding to my house in traffic I was told to shut up. I want it to be known that I never said anything negative to these agents. I was never impolite. I did not resist them in any way because I had been a law enforcement officer and I know what resisting arrest does, so I did in no way.

As we were proceeding home they asked me where my firearms were kept. I explained to them that I had a library where I kept my gun collection. They told me that I had two choices: I either unlocked the door or they kicked the door in. So I said obviously that I would unlock the door.

I had two German shepherd dogs that were my private property. I was told that they had information that those dogs were trained killer dogs, and that if the dogs made any move whatsoever toward the agents, they would shoot them. I explained to them that the

dogs were pets, that they had nothing to do with being trained. One of them had been a Montgomery County police dog for 8 years, but he went through a substantial detraining process and he is strictly an attack command dog, which had nothing to do with violence at all. He is a command dog, which responds only to commands, and he had been detrained. I explained this to them. They said that, regardless, if the dogs moved, they would shoot them.

When we arrived at my house I observed the house was under seige. There were agents in the back of the house, agents in the front of the house with guns drawn. Of course, no one was home, so I still have yet to understand what that was all about.

They had parked their cars in the grass, and at that time it was wet so they destroyed the yard. Actually they had to get a couple cars pushed out.

I unlocked the door. We went into the house, and of course they checked to make sure nobody was there. They asked me where the firearms were. I took them directly to the firearms.

I had a collection, Mr. Chairman, that consisted basically of Winchester commemorative rifles, which are rifles that are made in commemoration of an event, a place, or a person. They are very selective in number. They are very, very intricate as far as their manufacture. They are made for different esthetic purposes.

If they were ever fired, they would devalue at least 50 percent, and possibly more. The majority of my collection, which was approximately 83 firearms, was strictly unfired, commemorative weapons. This included some handguns also. As I remember, it was about a 50-percent mix.

The agents started ransacking the house. By "ransacking," I mean taking the things like drawers in the bedroom and turning them upside down on the bed, just opening anything at will. I questioned right away—I said, "What in the hell is going on?" I hate to be impolite, but that is what I said, "What in the hell is going on?"

He said to me, "Just shut up. It's none of your business."

I said, "Well, do you have a warrant?" They finally served me with the warrant after they were already in the house.

I said, "Why are you seizing my property," because now they started to tell me they were taking my guns. I said, "You have no authority to take these guns. Why are you taking them?"

They explained to me they had the authority to do anything that they wanted; they had a court order.

I said, "Why would you take all of my firearms when they have nothing to do with my business?"

So the agent in charge decided to call Baltimore. He used my telephone, made a call, got a hold of Baltimore, who evidently was in charge of the raid at that time. Baltimore told him just to seize everything, don't worry about who it belongs to. I had a firearm that belonged to another policeman; it didn't make any difference. Just seize everything and confiscate it.

The types of firearms I had, Mr. Chairman, were if they even have a scratch or a mar they are devalued. These agents took these firearms in a manner in which they were going to throw them in postal bags together. When I touch these firearms myself, I would wear silicone gloves and use a silicone cloth to keep them wiped from moisture so that they would not oxide in any way. These

agents just grabbed them randomly by the barrels or whatever they felt to be convenient and just starting tossing them together in the middle of the room. To say the least, I was in tears, and that is probably an understatement.

There was one firearm in the house that was loaded, which was a Colt rifle. I told them it was loaded upfront so that there would be no question of anybody getting hurt. Well, the agents were not familiar with how to unload the gun, so I had to unload it for them with my hands cuffed behind my back.

My wife then arrived on the scene because she had left my dad's employment. She decided to follow and find out what was going on. She walked in the house. At first they would not let her in the house. Well, she explained to them that it was her house and she could walk in if she wanted to. They finally let her in.

I have pictures, by the way, Mr. Chairman, that my attorney is suggesting that I let you see, of the types of commemoratives that I had. As you can see, they are very intricate. They include booklets, coins, and things that go with the firearms. They are in cases, specially displayed.

I also have pictures that I have brought of my actual home at the time that you can see. It actually shows where the collection was displayed and how it was displayed, so that you can see it was not in boxes ready for sale. It was a privately owned collection. It was displayed as a collection.

The agents asked me if any of my firearms were for sale. I explained to them, yes, that I had weeded my collection down; that in the other room, the guest room, there were some firearms on the bed that were for sale, that I was intending to sell, that I was not going to keep. However, everything in the library absolutely in no way was for sale.

They did not want to differentiate between what was for sale and what was not. They just randomly seized everything.

As they were making the list of what they were seizing, they did not know how to describe it or what it was, so my wife had to describe it for them so that they would know what type of firearm they were seizing. For instance, there was a Ruger breechblock 56 Winchester that they did not even know how to open the breechblock. My wife had to show them how to do that.

My wife complained bitterly about her guns being seized as well as mine. They did not want to hear about it. She could not understand what was going on. A couple of the agents said, "We don't really agree with this, but we have to do what we are told."

She was in tears, to say the least. She asked the agent in charge as to what was going to happen to me. He told her that I could go to jail for 65 years or pay $65,000 in fines. They were very rude with her, very abrupt with her.

At that time I was taken to Hyattsville for a bond hearing. On our way to Hyattsville again they had me—this was from Damascus, Md., all the way to Hyattsville—they had me handcuffed behind my back. This time I was really going to get sick. So I finally asked the agent, "Is there any way that you can move these cuffs in front before I get sick?"

Finally, they pulled over to the side of the road and one agent was going to move the cuffs in front of me and put them through

my belt, and the other agent said, "Well, why don't you run so I can shoot you?" Of course, I didn't respond to that because I still did not to this point know what I was charged with.

We got to the commissioner's office in Hyattsville. The commissioner recognized me as a policeman and could not understand what was going on. He was very friendly because he was trying to help me.

The agents at that time were sticking very close to me. They would not move away from me or anything. I could not talk to anybody.

My attorney arrived who had been requested by my dad's employer. He asked to speak to me. The agents would not let him speak to me.

So we walked into the courtroom, and the first thing the attorney did was make a motion to be allowed to speak to his client, which the judge finally granted and told BATF agents to let me talk to my attorney. I still did not know what I was charged with.

We went to the bond hearing. I finally was read the charges in front of the judge. That was the first time I heard.

Prior to this I was asked to make statements repeatedly, almost coerced into making statements, which I refused to make because as a law enforcement officer I know that you do not make a statement unless you know what you are talking about. They repeatedly wanted a statement out of me. I repeatedly refused.

They kept reminding me that if I did not make a statement this would be looked upon later on as negative in my favor, and that any deals that they might cut or whatever they might offer me would not be offered. I was not influenced and did not make a statement.

I went before the hearing. They asked for me to be put in jail. One of the reasons that the assistant U.S. attorney used was that I was a trained violent person because of my training as a policeman and as a military person. The judge asked her why I was prone to violence and she said, "Well, he has the training." Well, the judge rejected that and released me on personal bond. I posted, I think, $500.

The emotional strain that all this caused—first of all, it was on the front page of the newspaper, the Washington Post and the Washington Star. The news media, of course, grabbed a hold of it and went out to my dad's business and photographed it, and had it all over the 6 o'clock news. My father has not spoken to me in 5 years since this occurred, so I have lost my family as a result of this from that day.

Economically I suffered a loss of approximately $40,000 in firearms to $50,000 in firearms, which I have yet to get a decision as to whether they will ever be returned and, if so, in what condition.

My wife and I have not had children since because we are still under the BATF harassment, which includes—and my attorney disagrees with my stating this, but I am going to state it because I want to—they even include calling my employers currently and making sure that I get fired by letting them know that I am currently under indictment and have been initially found guilty pending another writ of error.

They have done everything from audit my taxes for 5 years, which they found $120 error in one year which I gladly paid. I have gotten things from the phone company saying my phone records have been subpenaed, checked, and they have found nothing.

For the last 5 years the Bureau of Alcohol, Tobacco, and Firearms has checked every firearm that I ever owned or transferred or had any touch with, and has yet to be able to find anything illegal with them.

What the actual charge consists of, Mr. Chairman, which I should explain to you, is I had a private collection of firearms which included 80 firearms at the time I was arrested. As I was selling firearms, I had been instructed twice during audits by the BATF when I was still a licensed dealer that I could lawfully sell a personally owned firearm without running it through my books. In other words, one was totally separate from the other.

On two occasions I was audited by the BATF. Both times I passed 100 percent with no violations whatsoever, of paper or anything. Both times we had conversations.

They visited my collection. As a matter of fact, the agents that actually came to visit me were very friendly at that time. They looked at my collection. They admired it. They complimented me on it. Nothing was said about my selling anything privately as being illegal.

The final charge was that I had sold five firearms to another Maryland resident within my own State without filling out any paperwork. My reasoning for this was that since he was a Maryland resident and I was a Maryland resident, according to normal, everyday procedures, it is legal for one Maryland resident to sell a firearm to another Maryland resident.

I never even imagined that since I had a Federal firearms license I lost my right to private resale, although, according to the Bureau of Alcohol, Tobacco, and Firearms and their indictment, that is basically what they were stating.

They charged me for five counts of not filling out a 4473, which is a piece of paper. They charged me for five counts of not running it in and out of my bound books, which is the same firearms; one count of not filling out a multiple sales form. So I had 11 felony violations for paperwork transactions.

Of course, as you know, Mr. Chairman, everything in the 1968 Gun Control Act is a felony. Regardless if you forget to put a date on the yellow form of paper, 4473, or if you forget the customer's middle name, it is a felony according to the 1968 Gun Control Act. So I was charged with all the felonies.

I was indicted. This has been going on for 5 years and is still not resolved. I would like to have my attorney testify to the actual proceedings, the legal proceedings, and the time it has expended. I have yet to get out of the first sets of courts. I am still in Baltimore in a preliminary court. I have not even been given the right to go to the U.S. court of appeals yet. Again my attorney will disagree with this: That is because the judge has not done anything with my case in 5 years, to speak of. I do not feel that I have been given due process of law by any means.

What has this done to me personally? It has somewhat destroyed me to a degree. Of course, I have lost my family. I lost $40,000 in

firearms. I cannot even tell you the amount of dollars spent in attorneys' fees, considering I have had three attorneys. It has gone over a long period of time.

The continual change of employment, for which I will thank the BATF, is not exactly promising as far as income. As a matter of fact, every time I now have to go in public, as I am today, with the news media—I am sure that the firm I am working for today will probably ask me to leave tomorrow. It is not a comfortable situation, to say the least.

As a law enforcement officer I can say this: I felt I was very professional. I did the best job I knew how. I might not have been the smartest or the best, but I did the best I knew how.

After dealing with these BATF agents, and judging them as one professional to another, talking to other FBI agents that know me who are still friendly, or whomever in law enforcement, they have to be the most nonprofessional law enforcement agency I have ever seen in my life. The abuses, the way they handle people, their total attitude toward you is unbelievable. I mean, it is hard to believe that in this country today these people actually exist and survive.

Somewhat it is perpetuated by Government because they have to justify their existence. In order to come before you, Mr. Chairman, and ask you for more appropriations to make their offices bigger so they can get their bigger desks, so they can get more promotions, so they can have someone like me showing 83 confiscated firearms and having 11 felony arrests against me, it really looks very impressive statistically.

What have they really accomplished? In my eyes they took an everyday, ordinary person who had never been arrested for anything, who did not even have a traffic ticket against him, and made him into a felon. I cannot get a mortgage today. I find it hard to hold a job today because of the type of jobs that I work. It has just made my life generally miserable. I have lost a lot of friends. Of course, you really find out who your friends are in something like this. It has been very humiliating.

To cast one experience: I went into a restaurant in Rockville with my wife a year or so after I was arrested. There were a couple policemen in uniform sitting there that I knew. I said, "How are you doing?" They said, "We don't talk to criminals. Get out of here." in front of my wife. You can imagine—I don't know if you can really imagine--what it feels like.

I am not somebody who came up as a criminal. I do not use drugs. I have never used drugs. I have never committed a crime. Yet, now I am a criminal.

There was no intent in anything I did. In no way did I ever intend to violate any laws. If I did violate a law, it was a paperwork thing and there was no intent behind it.

To make me the same type of felon as the guy who goes out on the street and pushes drugs or who kills his wife and gets 30 days in jail, as I just read in the newspaper, I have to face 1 year in jail if this thing ever comes true or at least 30 days. I do not think that is justice. I do not think that is what the 1968 Gun Control Act was intended for. If it is, I feel very sorry for this country and the gun owners because it is wrong; it is not right.

I know this committee is doing everything it can. I hope maybe the Congress of the United States can do what it can to overturn a very unfair and bias law which is being misused by a Government agency. They are strictly building statistics to make themselves look good.

If I may congratulate President Reagan, the only thing he has done that is good in this particular case is that he is going to get rid of them, because that is the only answer.

Senator GRASSLEY. Counselor?

Mr. MARTIN. Yes, Mr. Chairman.

I might, just for the committee's assistance, describe for you the legal ordeal that Mr. Boulin has gone through for the last 5 years.

I have represented Mr. Boulin for approximately 3½ years. As he said, he was arrested on December 14, 1977. He was indicted in the 11-count indictment on December 20, 1977. He was tried in the U.S. District Court in Baltimore on September 13, 1978, and found guilty.

The judge reserved his decision. He was found guilty 11 months later. The judge reserved making a decision. It was 11 months later that the judge did make a decision. Mr. Boulin was sentenced on October 11, 1979, for 1 year, and that was suspended all but 30 days.

Mr. Boulin filed an appeal to the U.S. Court of Appeals in the Fourth Circuit in Richmond. Pending that appeal, material came to my information that corroborated Mr. Boulin's testimony and statement that he had made before the judge in Baltimore that in fact he had been advised on at least two occasions that it was legal for him to make a sale of his personal and private firearms to a Maryland resident, as opposed to the firearms that he kept in his business inventory. That came to my knowledge in a letter to Senator Hayakawa from the then-Director of the BATF, John Krogman.

Following that, I filed a writ of error coram nobis. That is a writ. If the Senator is a lawyer, he knows what that is. If he is not, that is a writ that says there is a fundamental error in this case and there is information that the judge ought to have to overturn this conviction.

That is, I was telling the judge that in fact Mr. Boulin was correct; he was advised that the conduct he was convicted of was legal by the very agency that prosecuted him. This letter to Senator Hayakawa, dated July 30, 1979, corroborates that. In fact, that is the policy of the BATF.

After I filed a writ of error coram nobis and brought that to the judge's attention, then the Government, the prosecutor, brought—there was then, after that, a new Director of BATF. He is the present Director, G. R. Dickerson. He overturned that in a letter to the prosecutor. He said, "On reconsideration, we have determined that the statements of former Director of the ATF Krogman are not accurate and do not comport with the new position."

Following that, the present BATF Director was interviewed in Shooting Industry magazine in November of 1980, and he appeared to reverse that opinion that he had given to the prosecutor.

Therefore, that writ of error coram nobis has been before the judge since February 12, 1980, and the judge still has not decided whether or not he is going to reverse the conviction of Mr. Boulin.

If he does reverse it, of course Mr. Boulin walks away a free man. If he does not, we intend to appeal to the fourth circuit.

While all this has been pending, the BATF and the Government, the prosecutor, have retained Mr. Boulin's 83 firearms, most of which were commemoratives, and he described for you what they were—unfired firearms that were never used in his business inventory and which were his personal possessions. In fact, he did not say this, but they represented his and his wife's lifelong savings. That was their savings—that was to invest in firearms, because Mr. Boulin was familiar with it.

We still have not resolved that forfeiture; that is, whether or not Mr. Boulin is going to get the firearms back. We are trying to do that now, but it has been a long and lengthy process for Mr. Boulin.

I thought the committee should hear how long it has taken for justice or injustice to be completed.

Senator GRASSLEY. Thank you very much.

You stated that you do not know what you have paid for attorneys' fees or to defend yourself. You do not have even a ballpark figure for us?

Mr. BOULIN. Between the loss of employment, the loss of my firearms, and the attorneys' fees, it is well in excess of $100,000 and still climbing every day. Again, Mr. Chairman, you have to remember something—that every time I appear in public like this—I represent a luxury car automobile dealership here locally. Unfortunately, when this appears tonight in the news, most likely the owner is going to ask me to leave. It is not the type of news that they want to see their people in; let's say it that way.

See, a lot of people do not realize that a commemorative firearm is this as it exists right here [indicating photograph]. A lot of people think that I had a little handgun that I stuck in my back pocket and I went out and robbed banks on weekends, or whatever. Well, that is not the case.

There are legitimate collectors in this country who are very proud of their collections who spend a lot of time, as I did, many years, documenting their collection, originating it, collecting for serial numbers, consecutiveness, whatever it might be. I spent a lot of time and effort putting this collection together. It is not just the time. It is not just the money. It is the fact that this was my entire life's savings with my wife. As a matter of fact, she inherited $15,000 in 1972 or 1973 and we poured the entire amount into our gun collection because we felt that was where I had the most knowledge to possibly have a good investment. It is not just my money; it is my wife's money. She has committed no crime and she has been penalized, too, to the umpth degree. How she has stayed with me for this long through this whole ordeal I will never understand.

There is no way that you can tell me that the BATF should be allowed to do what they did. I do not think that was your intent as a congressional body—to give them the powers to enforce laws the way they do.

Senator GRASSLEY. Thank you very much for your testimony.

Our next witness is David Berry, Spartanburg, S.C.

STATEMENT OF DAVID BERRY, SPARTANBURG, S.C.

Mr. BERRY. Thank you, Mr. Chairman. I would like to thank the committee for this opportunity to appear before it.

I am David E. Berry from Spartanburg, S.C., formerly in the gun business, so to speak. I am going to give a brief countdown on how this took place. I will start at the beginning of it.

First, let me add for the record that in South Carolina we have an auxiliary police force called State Constables. Aside from being a licensed gun dealer in South Carolina, I was a South Carolina State Constable and worked with the police on a voluntary basis at least 2 to 3 days weekly.

I owned the largest independent gun shop in Spartanburg, S.C., Southeastern Gun Exchange.

One day two people walked into my business and a gentleman wished, after examining several firearms, to purchase a handgun. I said, "Well, you'll have to produce the proper identification and fill out the proper Federal forms." As it turned out, this man was from out of State. As you know, out-of-State residents cannot buy firearms. Therefore, I refused to sell this man a gun. He was, I think, from—I am trying to remember—Ohio in South Carolina.

I said, "Federal law prohibits it. There is no way you can buy a gun. There is no way possible."

He left and walked around the shop a while. A few minutes later another gentleman came up and he examined the gun. He said, "Well, I would like to purchase this gun."

I said, "Well, if you can produce the proper identification, there won't be any problem if you are a South Carolina resident."

He said, "Well, I am. I live in Greenwood, S.C., and my business is in Spartanburg."

He produced the proper identification, he purchased the gun, and he left. It was a handgun.

In South Carolina you can only buy one handgun every 30 days. After this took place I thought it was just an ordinary business transaction, and did not think any more about it. Well, about a month later this same gentleman walked into the shop and he was accompanied by somebody else. I immediately recognized him.

They came over to the counter and he said, "I would like to buy a gun."

I said, "Well, I don't think 30 days have gone up."

He said, "Well, check."

I checked my records and, sure enough, 30 days had elapsed, so he was qualified to buy another one.

The gentleman with him did not say a word. He just stood idly by in the shop.

So he selected a handgun, and he bought another one and left. Everything was fine. He had a South Carolina driver's license, a social security card, the proper identification. Again, I regarded it as a normal sale, but I did remember him.

Well, about a month passed by and I got a phone call one day. I went down to the shop early one morning and I found seven agents of the BATF there and three U.S. marshals there. I was immediately grabbed, frisked, searched, put up against the car and told I was being arrested, and that we had to go to the Federal magistrate's

office in Greenville. I was in a total state of shock. I just couldn't believe this.

I said, "What is this all about?" They just said, "Shut up. You are under arrest. You can find out the details later."

I was put in the car, as I said, and we went to Greenville—I might add at speeds in excess of 90 miles an hour from Spartanburg to Greenville on the Interstate. We reached Greenville. I made several phone calls. I was processed, and I was still never informed about what was going on. I was just held and they started this processing.

They said, "You've been indicted by the Federal grand jury for selling guns to out-of-State residents," and I couldn't believe this.

I said, "There's got to be an error. Let me make some telephone calls because I know this has to be an error."

They said, "There is no error about it."

As time went on during the day I made some telephone calls. I said, "I want to know exactly what I am charged with."

They said, "You're charged with selling firearms to out-of-State residents."

I said, "This cannot be correct because I haven't sold any firearms to out-of-State residents."

They said, "Well, this is a new thing we have called a 'strawman theory'—that in theory it is your responsibility to know if you refuse to sell a gun to an out-of-State resident and you do sell it to an in-State resident, it is your responsibility not to do that. You have to be responsible for the legal sale of the gun."

The person who buys the gun signs a Federal form, punishable by felony conviction, that everything is true and correct and answers it, and that he is the buyer. To this day I maintain that was a strictly legitimate sale.

Like I said, I was working with the police department. I was a South Carolina State Constable. I was involved with local community affairs.

Just for the record I would like to add this, too. You asked something earlier about the attitude of the BATF. My wife is the district manager for Senator Hollings in South Carolina in his Spartanburg office. The BATF just took great pride in saying, "We have a gentleman right now whose wife works for a U.S. Senator, and there is not a damn thing they can do about it." I just wanted that in the record.

Well, as the other cases, too, I might add, at the end of the day when I got home at 6 o'clock and turned the television on, there was the news, too: "Gun runner's caught in South Carolina," when in fact nothing had ever happened.

That is one thing I want to bring out. After all this goes on, a person cannot do much. The news media, the newspapers, and there is no way to retract all that.

As time progressed I told the U.S. attorney that there have to be errors. They said, "Well, we will see you in court."

As this took place there were two instances, and we went to the U.S. district court. I was found innocent on the first count and guilty on the other. It was two incidents, and I was found guilty on one and not guilty on the other.

I might add that there were three witnesses in my gun shop on the other one that were city policemen. On that one I was found innocent. They just testified to the normal sale. However, on the other I was convicted.

As time went on I found a legal instrument to go back to Federal court. Eventually—this is going into 5 years and is still not over with today—I had the conviction overturned, but I do still have matters in the court that have yet to be ruled on in excess of a year.

However, if it were not for the wisdom of a certain Federal judge, I would be sitting at this table right now a convicted felon.

The sad thing about it is there were 35 people in South Carolina who did not have the money, evidently, or could not stand the hassle of going to Federal court. The favorite trick of the BATF was to tell everybody, "Well, you can have a small fine and just surrender your Federal license, plead guilty, and that will be the end of it." It was their goal to put every gun dealer in the State of South Carolina out of business. Out of 35 dealers, 2 of us went to Federal court with jury trials—2 out of 35. Every one of them was this famous strawman theory tactic.

To this day I am still involved with Federal court to try to have these records expunged.

I think it is a sad day, Mr. Chairman, when a person in the United States cannot run a business. After this happened, I might add, the judge said, "Well, that gentleman owns his business. Everybody in the community knows him. He is known to the law enforcement. The chief of police was a witness at the trial. He can own that business and he can continue to operate it. He cannot have an FFL, but if an employee has it that is still within the law."

Therefore, I stayed in the gun business for about 2½ years after this, but the BATF never let up, just as other witnesses have said—everything from people coming in trying to sell machine guns to having the provisions of the Gun Control Act broken every way possible. Finally, one day I sold my business at a loss. I couldn't stand it.

It is a sad day when a person can't operate an independently-owned business without fear of Government prosecution. I still can't get over it to this day.

Senator GRASSLEY. Besides the loss of your business, how much have you paid just, out of pocket, for legal expenses?

Mr. BERRY. Well, it isn't over yet. This has been going into 5 years, like I said. Including attorneys and the loss of the business, I would say all this has cost me in excess of about $35,000, when nothing was ever done in the first place, just to prove that you are an innocent person.

I do hope the committee could appreciate that the way the BATF operates, one day you can be an honest, upstanding citizen of the community and the next day you are a convicted felon when no crime has actually been committed.

Senator GRASSLEY. Thank you very much for your testimony. I have no further questions to ask.

I now would like to call Preston Brown from Jacksonville, N.C.

STATEMENT OF PRESTON BROWN, JACKSONVILLE, N.C.

Mr. BROWN. Mr. Chairman, I am a hunter, a dog hunter.

Upon invitation to go bear hunting in the State of Maine, myself and two other friends, we left early one Friday morning on Interstate 95. We were traveling through the State of New Jersey. We were stopped by two State troopers and were pulled from our vehicle. We were carried into the Elizabeth City jail. We were held and all this entire time we had not been told what we were charged with. We had just been stopped for we didn't know what.

We asked on several occasions, my friend and myself, why we were stopped. We knew it concerned our guns which were in the back window of my truck, but they never gave us an answer.

They held us at the State police office in Newark, N.J. until approximately 3 o'clock in the morning. They then took us to the Elizabeth City police. We were then, in turn, put in jail.

We spent the night in jail. We were not given an opportunity to make a phone call. We were not given an opportunity to call a bondsman. We were put in jail and held.

The following afternoon the policeman that put me in jail happened to see me in my jail cell and he asked what had happened. I advised him that I had not been given a chance to get a bondsman, that I had been put in jail and just held.

We had been before a judge. I told my story. He just put us under $1,500 bond and said we would have to wait until our trial.

The date that we were picked up was August 27. Our trial date was September 17. Had this policeman not seen me and come and offered help, and called a bondsman for me, I would have stayed in jail until the 17th of September.

My family, no one knew where I was because I had not been given a chance. I asked repeatedly to make phone calls.

He called a bondsman. Between the three of us we had the money to get out of jail. He got a bondsman. We got out of jail.

The policeman told me what I was charged with and gave me a copy. I was charged with transporting guns across the State of New Jersey without a permit. I was in one vehicle and my friends were in the other vehicle. We were all three charged with the same violation, with the same number of guns. I only had two guns in my vehicle.

The night that we were held at the New Jersey State police center I asked the whereabouts of my dogs. I had 15 aboard my truck. I was told not to worry about my dogs, that everything was being taken care of.

When we got out of jail the next day I started trying to find out where my truck and where my dogs were. Of course, they told me. It was very difficult for us to get around, but we located our vehicles. We had to pay $150 to get our vehicles out of storage. Then we went to the dog pound to pick up our dogs. Upon getting there, I was advised that I had to pay $646 for them to keep my dogs overnight, which I paid.

All in all, it cost me over $4,000 to get my truck, my dogs, and pay the bondsman to be released from jail in the State of New Jersey to continue my hunt in Maine. I had, of course, lawyer fees. I had to hire a local lawyer as well as a lawyer from the State of

New Jersey to try to have the matter settled, which I finally did. But it cost me around $2,500 for lawyer fees.

Senator GRASSLEY. I assume, although you did not make it clear, that somebody suspected you were violating a law of transportation of firearms.

Mr. BROWN. We were traveling the Interstate 95. A speeder came by me approximately 100 miles per hour. The trooper was after the speeder. He saw the gun hanging in my gun rack. Being from North Carolina, it is perfectly legal in North Carolina to transport your firearms that way. I never even thought of that. He just saw my weapons and let the speeder go and stopped me. That is how it came about. He saw the firearm hanging in my truck, which was unloaded. I had no loaded firearms in my vehicle.

Senator GRASSLEY. When it was all said and done, you were not convicted of anything or you were convicted?

Mr. BROWN. It was dismissed.

Senator GRASSLEY. Dismissed?

Mr. BROWN. Yes.

Senator GRASSLEY. Then give me what those figures you gave might add up to in total cost.

Mr. BROWN. A total cost. Of course, the $4,000 that I had to pay initially at that time of being released, I got part of my bond money back. However, a total figure, I would say in the neighborhood of $4,500 to $5,000 that it cost me, plus a needless amount of time, phone calls, and a lot of other things.

Senator GRASSLEY. Thank you very much for your testimony.

Mr. BROWN. Yes, sir.

Senator GRASSLEY. I am going to recess the hearing until Senator Thurmond gets here. It is my understanding that he will be along shortly.

[Recess taken.]

The CHAIRMAN. The committee will come to order.

How many more witnesses do we have? I would like you to come up here and raise your hands so that we can see who you are.

Is Mr. Phillips here? Is Mr. Knox here? Is Mr. Beard here? Are those three gentlemen here?

Mr. PHILLIPS. Did you call Mr. Phillips?

The CHAIRMAN. Messrs. Phillips, Knox, and Beard.

Mr. PHILLIPS. I am sorry; I was not in the room.

The CHAIRMAN. Those are the three witnesses left.

Mr. KNOX. Yes, sir. I am Mr. Knox.

The CHAIRMAN. I am going to let Mr. Eric Hultman go ahead with this hearing. If we do not finish, we will come back at 3 o'clock. If you wish to wait until 3, we can do that or he can go ahead with the hearing now.

Mr. KNOX. Mr. Chairman, I think we might just go ahead to get it on the record.

The CHAIRMAN. I think so, too. The record will be available to all the Senators once you put it on the record.

Mr. HULTMAN. Mr. Phillips, would you please proceed with your testimony?

STATEMENT OF EDWIN D. PHILLIPS, VINTON, VA.

Mr. PHILLIPS. All right, sir.

I will tell you a little about myself. I am from down in Roanoke, Va. I am an electrical contractor, a small one. I have lived in Virginian all my life.

So that I won't scare you, I'm a convicted felon but I'm harmless, I think.

Living in Virginia all my life, I kind of grew up with hunting and a great interest in the Civil War. I have studied it for about 20 years, 25 maybe. This started my interest in antique weapons. Of course, my family instilled the interest in hunting with modern guns in me.

About 1976 I decided I would like to attend a few gun shows and trade a few personal weapons that I had for possibly some antiques or maybe an antique for a modern weapon that I wanted. I went to the local BATF office in Roanoke and sought out the top agent there. I think his name is Hunt. I didn't know it at the time, but I sure do now.

I told him what I proposed to do—that I would like to attend a few gun shows. I did not have a license. Did I need one? I told him just what I wanted to sell. He said, no, being a resident of the State of Virginia, I could attend gun shows and occasionally sell a gun or trade a gun, as long as I did it to a resident of the State of Virginia, without a gun license.

I thought, well, I'll do this as time comes. About 2 weeks later two friends of mine from the neighborhood who own businesses contacted me on the phone and wanted to know what in the world I had done, that BATF agents were swarming their businesses with questions about my community life, my criminal record, just anything they could find out about me. Of course, this aroused quite a few of my friends who found out about it.

I thought nothing about it because I did not have any idea I would be breaking a law anywhere. I attended three gun shows from a period of August 21, 1976, to October 2. I live in Roanoke, but I attended one in Richmond, Va., where I had lived most of my life. I have lived in Roanoke about 12 years.

I attended one in Winchester which coincides with the reenactment of the Civil War battle at Winchester. They have a big Civil War show and a gun show. I attended that one.

I attended the gun show in Roanoke, which is 3 miles, approximately, from my home. An agent, unbeknown to me, approached my table from Maryland and bought a 1911 semiautomatic pistol from me, giving me no indication that he was a nonresident of the State of Virginia. I never left the State of Virginia to sell a gun or proposed to. Immediately upon selling him that gun—I didn't know it then—I was had.

At the same time, a friend of mine came in from about 30 miles over in the country, he and his wife. He is an avid collector. He sat down at my table and he had a semiautomatic 45 pistol, 45 caliber, that he had bought some years before at a local business in Roanoke and had given it to his father. When his father moved to Florida, the gun was returned to him and he decided he just didn't like that particular kind of weapon and he would sell it.

Well, he sold it to another person who came by my table and saw the gun, and that turned out to be a BATF agent. This gun was not mine. I did not make one nickel off of it. It was just sold across the table that I had rented for space.

When my indictment came, this gun's serial number was on the indictment for my selling it to a nonresident of the State of Virginia. The other gun that I personally sold to an agent from Maryland was also listed on my indictment. It just so happened to also be listed on another person's indictment 300 miles away, but this didn't seem to bother anybody too much. They decided they wouldn't pursue that charge with him but they would just pursue it with me at the last minute. Of course, I was charged with selling firearms without a license.

Mr. HULTMAN. Thank you, Mr. Phillips. Let me ask you a few questions, if I may.

You stated that you had attended gun shows previously but only in the State of Virginia. You never——

Mr. PHILLIPS. I never in my entire life have attended but four gun shows.

Mr. HULTMAN. To your knowledge, the individuals who attended those gun shows were principally residents of the State of Virginia?

Mr. PHILLIPS. Yes. Why would I look for a man 3 miles from my house? I may be gullible, and of course my hindsight is a whole lot different now than it used to be. I was 3 miles from my home. If I was going to break a law and be a convicted felon, I would sure have done it for more than a $100.

Mr. HULTMAN. This man who purchased the gun, he made no representation to you that he was a Federal agent.

Mr. PHILLIPS. He made none whatsoever. In the course of a conversation with the guy—I had seen him before. It appears the only three gun shows they ever saw me at, evidently I was under a magnifying glass, and a few others of us at the same time. I had talked to this guy on occasion and asked him one day what he did, and he said he worked for a company and he travelled, but the only place I ever saw him was in Virginia. I saw him in Richmond where I lived all my life, and I saw him 3 miles from my home. I had no reason to believe he was——

Mr. HULTMAN. I believe you stated you went to Roanoke and talked to an agent there.

Mr. PHILLIPS. Before I ever attended a gun show.

Mr. HULTMAN. He stated to you that you needed no license because you were not in fact a licensed dealer.

Mr. PHILLIPS. Absolutely. Absolutely. And at that time, I don't know the exact wording but I know the law does say that any individual may occasionally attend and sell a gun at a gun show.

Mr. HULTMAN. Based on those representations, you felt you were within the law?

Mr. PHILLIPS. Absolutely. Absolutely. The most guns I've ever owned in my life at any one time is 14, so I don't classify myself as a gun dealer. I do have a pretty extensive Civil War collection.

Mr. HULTMAN. I see the governor of Virginia has indicated that he would exonerate you. Have you requested any expungement of the record so that you will not carry a label of convicted felon?

Mr. PHILLIPS. Well, I have pursued that. A State delegate, Victor Thomas from down in Roanoke, went well beyond anything I could ever have asked anybody to do. I had my rights restored as far as voting and holding office, but I would hate to approach running for any kind of political office with a felony hung on me, so what does this mean?

I have tried to have the felony conviction overturned, but the judge has indicated if he turned it over then it would appear that he doesn't believe in a jury system by trial. The governor has the same feeling. It is pretty apparent as to what has happened to me and some of these other people. If I didn't work for myself, I have no idea what it would have done.

My thoughts have changed a whole lot since 1976. I am a State-registered contractor, and a lot of my work is done by bonds and by bids. All these things show up in your record. Thank goodness, I own my own home and did not have to apply for anything like that.

Mr. HULTMAN. You have not suffered any business loss that you are aware of or anything?

Mr. PHILLIPS. Well, I don't know. I don't know. But if I did, that would be very small to the other things that my wife and I have suffered—I might say, well, my respect for the whole legal system and what can happen to anybody, whether they are a Virginian or a U.S. citizen.

Mr. HULTMAN. Thank you very much, Mr. Phillips, for coming in today. We appreciate your testimony.

The next witness is Mr. Neal Knox, executive director, National Rifle Association.

Mr. Knox, would you come forward, please?

STATEMENT OF NEAL KNOX, EXECUTIVE DIRECTOR, NATIONAL RIFLE ASSOCIATION, WASHINGTON, D.C.

Mr. KNOX. Thank you, Mr. Hultman. I am glad to be here today to have an opportunity to appear on behalf of the NRA's 2 million members and several thousand affiliated clubs and organizations. I will not try to read my rather lengthy testimony. I would appreciate it if you would have it inserted in the record. I believe you have a copy.

Mr. HULTMAN. Your statement in its entirety will appear in the record following your oral presentation.

Mr. KNOX. There is a error that I happened to note. I believe it is on page 5. It states near the end of the last paragraph, "These individuals"—I was speaking of collectors—"These individuals are dealers." That should say, "These individuals are not dealers." If you will make that one correction in the testimony as submitted and then insert it, I will appreciate it.

I would like to mention just a couple of other things.

I think it should be pointed out that the Gun Control Act of 1968 was not one simple piece of legislation. It was three pieces of legislation passed over a period of months, all made effective on one day. It is a hodge-podge.

Even the category of persons who are prohibited from possessing are not the same as those who are prohibited from obtaining a fire-

arm. There was one court decision on this very point—that a guy could legally possess but he would commit a felony when he obtained. Now I do not think that the Congress of the United States should leave on the record that kind of legislation.

Mr. HULTMAN. Are you referring to the *Bass* decision?

Mr. KNOX. That was not the *Bass* decision. I cannot recall the name of that decision, but I will supply it for the record.

[Material was subsequently supplied for the record:]

The decision refered to above is *Thrall* v. *Wolfe*, 503 F2d 313 (7th Cir: 1974).

Mr. KNOX. It should also be pointed out that on the day that the Omnibus Crime Control and Safe Streets Act, the first two parts of this bill were passed—which the then-President Lyndon Johnson wanted to veto because of other items in there, in my opinion, matters concerning wiretapping and courts—he at that time put a fast track under a new bill. This legislation became known as the Gun Control Act of 1968. That was the third part of the legislation. He complained that the bill that had been passed was a watered-down version of what he desired, a halfway measure. He called for this third piece of legislation.

It should be noted to those who say that the National Rifle Association is paranoid because we feel that people want more than they talk about getting at a particular time, that only a couple weeks after President Johnson requested the Gun Control Act of 1968 he proposed a registration and licensing program for all firearms—rifles, pistols, and shotguns.

I do not think this is the place to go into all the discussion of where somebody would like this to end, but I think that is indicative and should not be forgotten.

We have now had about 12 years of enforcement of the Gun Control Act. It has had no visible effect upon the crime rate unless you said that it was the cause of the increase in crime. Since 1967 the crime rate has gone up about 40 percent. Under this law there have been about 20,000 arrests; there has been about a billion dollars of taxpayers' money spent on enforcement. No one seriously believes that the Gun Control Act of 1968 has had any impact upon the crime rate.

S. 1030 is a rational, balanced approach to the problems of this law. It seeks to make prosecution of the true criminal easier and the punishment more certain by coordinating the classes of persons prohibited from purchase or possession, by forbidding transfer of firearms to these individuals by private citizens as well as by dealers, and by imposing a true mandatory sentence for the misuse of a firearm in a crime of violence. It provides much-needed safeguards against civil liberties abuses by defining the commands of the Gun Control Act in a much more clear fashion, so that a law-abiding citizen may know what is expected of him and may not be prosecuted for misconstruing a vague provision.

We have heard today from some of the people who have been abused by this law and the way it was enforced, but the basic problem is the law.

This bill, S. 1030, provides protection against prosecution for inadvertent or technical errors by requiring proof of criminal intent as a prerequisite for bringing charges. Blackstone said that it must

be known that it is against the law before you prosecute someone for violating the law.

It safeguards against unreasonable search and seizure of firearms collections and inventories. It would prevent some of the things that we have heard about today. It would provide for award of attorney's fees if illegal and unreasonable seizures and forfeitures are made.

There has been a little comment about the overzealousness of the Bureau of Alcohol, Tobacco, and Firearms in enforcing this law and trying to make cases. According to press reports at the time right after this law went into effect, the head of the BATF office in Boston, whom I happen to know, tried to bring charges against the city of Boston and the Parks Department for failure to register the 16-inch guns on the battleship *Massachusetts*, which had become a city park.

If S. 1030 is passed, it would have not the slightest adverse impact upon the crime rate; it would have not the slightest impact upon criminals because criminals are by definition those who break the law, including gun laws. But if S. 1030 is passed, it would eliminate the kinds of things or many of the kinds of things that we have heard about today—stories that moved us, the kinds of things that this Congress should not allow.

I thank you very much for the opportunity to be here this morning.

Mr. HULTMAN. Thank you, Mr. Knox.

I have a few questions.

Mr. KNOX. Yes, sir.

Mr. HULTMAN. From the witnesses that we have heard today and your statement as well as the others made by Members of Congress earlier today, it is clear that there are a number of deficiencies in the 1968 act. Which provision or provisions in the 1968 act do you think this committee should consider as the most serious deficiencies and ought to address?

Mr. KNOX. If I had to put it on one thing, it would be the fact that any technical violation is a Federal felony, when it should be willful. There should be a willful violation of the law.

We have looked at this bill for about 3 years now. We feel that everything in this bill is critical. I would like to see more additional changes than this, I might admit, but these are the changes that we feel are reasonable and necessary. We would like to see the entire bill enacted.

Mr. HULTMAN. Although the bill has provisions that would address this point, is there a clear dividing line between the individual who is actually engaged in the activity that would fall within the definition of a licensed dealer and some of the individuals from whom we have heard today who simply pursue the purchase, sale, and exchange of firearms as an avocation or hobby? Do you think there is a fine line there or is there some way we can approach it?

Mr. KNOX. I think the dividing line is one of motivation. I realize motivation is difficult to put into the law.

All my life from the age of about 10 or 12, I have bought, sold, and traded firearms. I have never been convicted of a speeding violation. I did pay a red light ticket the other day.

If you were trying to make a distinction that would go into the law, a legal definition, I think that one of the most important things would be whether he had business premises and things like that. However, I realize that there are those who unscrupulously deal in firearms—and I use deal in the same sense that some use the word trafficker, and I do not know exactly what that means. There are those who intentionally violate the law in order to make a profit and they do not worry about the law; they do not worry about the gun control; they don't worry about whatever that law is in that area. They are the same kind of people who do not worry about laws against rape, robbery, and murder.

The definition in this bill, S. 1030, I believe is about as good a definition as we could get to indicate that distinction between a person who collects guns, like some people collect stamps or coins, and the person who is really in the business primarily for the purpose of profit.

Mr. HULTMAN. If we consider changes in the 1968 act as provided for in S. 1030, should we make a distinction perhaps between the coverage of handguns as opposed to shotguns and rifles or do you believe that generally firearms as a generic category ought to be it?

Mr. KNOX. The only difference between a long gun and a short gun is a hacksaw. Those who would propose that there be a distinction that, well, maybe we could give up S. 1030 for rifles or shotguns also tell us that they are not interested in long guns; it is only those little handguns that they are concerned about. If that be the case, why is it that they would want to maintain any of the present Federal laws on rifles or shotguns?

Mr. HULTMAN. If BATF is dismantled and its responsibilities transferred to, I believe, the Secret Service, which is the proposal that has been circulated, some would argue that perhaps the necessity for S. 1030 is diminished. In spite of that, do you think S. 1030 is needed?

Mr. KNOX. It is my understanding that the same number of agents who presently are enforcing the firearms laws would be transferred to the Secret Service in order to enforce the firearms laws. The only effect would be that they would get different badges and a different name on the door, and hopefully some better administration but the main bosses are the same. They come under the Assistant Secretary of the Treasury for Enforcement whether they are in Secret Service or in BATF.

The problems are those of the law. The law must be changed. I do not care who enforces it.

Mr. HULTMAN. I have one last question, Mr. Knox.

Mr. KNOX. I should qualify that. Before I say I do not care who, as long as you are talking about there within those three agencies that come under the Treasury Department, which of those three really makes no difference.

Mr. HULTMAN. Senator Denton had asked a question I would like to ask on his behalf. At page 13, line 1, of the bill it states that the Secretary of the Treasury "may" make available to a State or local political subdivision information about firearm transactions. This "may" would then leave it discretionary with the Secretary of the Treasury. Should the Secretary of the Treasury be allowed to with-

hold information from State and local law enforcement agencies as the bill provides?

Mr. KNOX. I think as a realistic matter where there is a problem within the State, the State has addressed that with a State law and has drafted its own legislation, and normally would make such information available by its State law.

Mr. HULTMAN. So you think that the State law would permit——

Mr. KNOX. I think that, if there is a problem, the State has addressed the problem within its State in most cases. That distinction is not too critical. The biggest thing that needs to be considered is that under this law there has been a gathering up of information and disseminating of that information to people who do not have anything to do with firearms law enforcement.

For instance, the BATF has by its actions caused some individuals who are collectors to feel that the only way that they can be protected from the actions that we have heard about today is by obtaining a license. Therefore, they obtain a firearms license and the BATF has on occasion gone to the local municipality and said, "Well, this fellow doesn't have a business premises. He only operates out of his home. Your zoning laws prohibit a business being operated in the home." We object to that type of gratuitous release of information to an agency that really does not need it.

The "may" versus "shall" distinction is actually one of direction. By using "may," we believe that a direction will be given the enforcing agency that the gratuitous conduct I have just described will not be permitted. In any event I cannot forsee a situation where a valid law enforcement request by a State would be denied simply because the law reads "may" rather than "shall."

Mr. HULTMAN. I have no further questions. I appreciate your testimony.

Mr. KNOX. Thank you very much. I appreciated being here.

[Prepared statement of Neal Knox follows:]

TESTIMONY OF NEAL KNUX,

EXECUTIVE DIRECTOR

NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LESISLATIVE ACTION

Mr. Chairman and Members of the Committee on the Judiciary: I appreciate very much the opportunity to testify on behalf of the National Rifle Association. The NRA is composed of somewhat over two million members, in addition to several thousand affiliated clubs and organizations. The activities of our members span the range of the shooting sports from hunting to collection of antique firearms; our activities as an organization range from status as a governing member of the Olympic Committee to the training certification of 54,000 certified firearms safety instructors.

For our two million members, and for the tens of millions of Americans who own and use firearms in a lawful manner, the legislation now before the Judiciary Committee is of vital importance. It is, in a very realistic way, their civil rights act. It will, as the preamble to the bill states, provide them with much needed security against unreasonable search and seizure, uncompensated confiscation, and other deprivations of due process of law.

These deprivations are not hypothetical; they have occurred in the past, have been significant in number and devastating to the individuals involved. Without legislation such as S. 1030, they will occur again in the future.

S. 1030 takes the form of amendments to the Gun Control Act of 1968. A brief discussion of that legislation is therefore essential to illuminate why amendments to clarify its terms and prevent abuses is essential.

While the antecedents of the Gun Control Act can be traced back as far as 1958, the movement for that legislation in something approaching its present form became most significant in 1967 and 1968. The nation was experiencing an unprecedented

series of urban riots; had witnessed the murders of Martin Luther King and Senator Robert Kennedy; political radicalism of both left and right was seen as an enormous threat; and from the standpoint of the legal system we were in the midst of a massive consolidation of power in government and in particular at the federal level.

The Gun Control Act was put together in a hurried, haphazard fashion. It emerged not as one piece of coherent legislation, but as three seperate pieces enacted on two different dates. The first two portions compose Title IV and Title VII of the Omnibus Crime Control and Safe Streets Act. Title IV generally extended the duty to obtain a federal license to any who were "engaged in the business" of dealing in firearms, limited interstate sale of handguns, and defined classes of persons who could not receive or transport firearms in interstate commerce. Title VII defined those classes of persons who could not possess firearms. While it would seem logical that the classes of persons who could not receive firearms should be about the same as those who could not possess, in fact the two pieces of legislation were not coordinated. Most of the categories were not identical, and only two were even similar. These two titles were enacted on June 6, 1968 and were to take effect on December 16 of that year.

The day of their enactment, Lyndon B. Johnson complained that the bill was a "watered down version" of what he desired and a "half way measure". The Administration called for a third piece of legislation, to be called the Gun Control Act of 1968, which would extend these controls to the owners of rifles and shotguns. The haste with which this legislation was pressed is today almost unbelievable. It was introduced in the House on June 10, 1968, and a motion was made in Judiciary Committee to report the bill out on the following day, only an hour after minority members were given copies and before most Members had even had a chance to read it. It failed to clear the Committee by a single vote -- on a 14 - 14 tie. The legislation was passed

and reconciled before the first two bills became law, so that the entire package of three bills ultimately went into effect on the same date.

Today, of course, we have the benefit of hindsight which was not available in 1968. Today we can see that the Gun Control Act of that year has had no visible effect upon the crime problem of this country. In fact, the murder rate in 1967, without such legislation, was about 40 percent lower than it is today after fourteen years of enforcement, over 20,000 arrests, and nearly a billion dollars in enforcement budgeting. Today we can see that enforcement of the Gun Control Act has all too often been directed against law abiding gun owners rather than street criminals, and that powers broadly granted and commands vaguely defined have led to the abuses of civil liberties, S. 1030 is a rational, balanced approach to such problems. It seeks to make prosecutions of true criminals easier and their punishment more certain -- by coordinating the classes of persons forbidden to purchase or possess firearms, by forbidding transfer of firearms to these individuals by private citizens as well as by dealers, and by imposing a true mandatory sentence, imposed without probabation or parole or any other form of release, for those who use a firearm or destructive device in commission of a violent federal felony. It provides much needed safeguards against civil liberties abuses by defining the commands of the Gun Control Act in a much more clear a fashion, so that a law abiding citizen may know what is expected of him and may not be prosecuted for misconstruing a vague requirement. It provides protections against prosecution for inadvertent or technical errors, by requiring proof of criminal intent as a prerequisite to the bringing of charges. It safeguards against unreasonable seizure and forfeiture of firearms collections and inventories, and provides for award of attorney's fees if illegal and unreasonable seizures and forfeitures are made. In this and other ways, S. 1030 seeks to protect the legitimate and lawful user of firearms.

I would like here to briefly discuss some of the more important features of S. 1030 and how it will benefit our members.

First, the limitation of prosecutions to willful violations is of critical importance to us. The Gun Control Act itself contains a general punishment clause which provides that anyone who violates its terms shall be subject to up to five years imprisonment in a federal penitentiary. Most of its sections, which contain many technical commands, require no proof of criminal intent. Thus an individual who inadvertently commits a technical infraction is in fact guilty of a federal felony. Numerous individuals have been prosecuted and convicted on this basis -- deprived of their civil rights to vote, hold office, and even own firearms (and in this case deprived permanently, since one who is convicted of a violation of the act itself is barred from ever receiving "relief from disability" based on his good reputation and subsequent behavior). S. 1030 requires that violations be "willful" before they can be prosecuted. Under its terms, cases such as those which the Committee has heard and which earlier Subcommittees holding oversight hearings have heard, could not be brought. An inadvertent, honest error of fact or of law could not be the basis of prosecution.

A second provision of critical importance to our members is the provision of a coherent definition of "engaging in the business". Existing law simply makes it a felony to "engage in the business" of dealing in firearms without an appropriate federal license. Neither the statute nor the regulations promulgated under it provide a definition of what constitutes "engaging in the business". This is vital to our members because many of them are fellow collectors who, in order to upgrade their collections or begin collecting in more specialized areas, will from time to time swap or sell some of their existing collection. These individuals are not "dealers". They have no premises, buy, sell or trade for the purpose of perfecting their

own collection and not to support themselves, and carry on their collecting activities in precisely the same way as coin or stamp collectors.

Yet -- as has been frequently documented in earlier hearings -- Treasury agents anxious to improve their productivity figures by making more arrests and seizures have frequently singled out such individuals and prosecuted them for having "engaged in the business" based on as few as two sales from their collection over a period of months. If a state or local authority were going about prosecuting citizens for failure to secure a sales tax license based on having sold two pieces of their personal property, we -- and you -- would justly complain of the abuse. But this was no prosecution for a misdemeanor violation. Those who were convicted under this statute became federal felons, with loss of civil rights and subject to a substantial term in a federal penetentiary. Even those who were acquitted suffered the loss of usually $5,000 to $15,000 in legal fees to defend such a case in federal court. It is not possible to defend or justify the financial -- and sometimes physical -- ruining of such firearms collectors, many of them veterans, retired or active duty police officers, respected members of the community, and generally outstanding citizens. The time has come to change the law so as to protect against such cases, and this is presicely what S. 1030 would do, providing for the first time a clear definition of what "engaged in the business" constitutes. Under S. 1030, this phrase would apply soley to a person who devotes time attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of deriving profit from such sales.

A third area of vital concern to our members is the limitations which S. 1030 will place upon seizure of firearms. Existing law simply and broadly permits seizure of firearms and forfeiture to the federal government whenever agents feel they were used or even "intended to be used" in any violation of

law. There is no requirement that this be an intentional violation; even if there is no violation involving the firearms, the agents can sweep them up on the claim that they were "intended to be used", and there is no limitation on the power to seize -- either in terms of a time period, or even a requirement that they be returned if the owner is acquitted. The temptation to agents anxious to build up a good record for themselves and impress headquarters with the volume of their activities, inevitably becomes excessive.

Prior oversight Committees have heard testimony from victims of abusive seizures, persons who suffered the seizure of entire collections and inventories based on the claim that they had committed a technical infraction with regard to other firearms and therefore must have "intended to use" every firearm they owned in such technical violations. Thus, individuals charged with having "engaged in the business" by selling two or three personal firearms would find their entire collection of a hundred or more scarce and valuable collectors items seized on the grounds that they were "intended to be used". In many cases, the firearms would be withheld even after the owner was acquitted, as in the case of Curtis Earl, who testified before the Senate Committee on Appropriations his guns were kept even after a grand jury found no probable cause on every count charged against him. In many cases, the U.S. Government kept their collections even after no criminal action was taken against them. Seizure of museum grade firearms became so frequent that the Bureau of Alcohol, Tobacco and Firearms managed to build up its own private museum collection based on these. When we obtained the inventory records of their museum, we found such interesting entries as a collection of 57 Luger pistols and carbines, including one described as "gold plated and engraved", fourteen commemorative pistols, eight European "drillings", which combine rifle and shotgun barrels and whose values are in the thousands of dollars, and nine Winchester commemorative rifles. This collection had

been built up by seizure from the original owners, firearms collectors who are hardly likely to be selling ten thousand drillings to street criminals.

As some of you may be aware, seven firearms, some of them exceedingly rare, were taken from the National Rifle Association museum here in Washington -- a museum open to the public 364 days per year. Unlike most collectors, the NRA was financially able to fight this seizure in the courts, spending many thousands of dollars more than the actual value of the guns. The court ordered all our guns returned. Had we not fought the seizure, the Treasury Department would have had several more unique guns in its museum. (The seizure of the NRA Museum guns is far from unique in the annals of the Bureau of Alcohol, Tobacco and Firearms often over-zealous and irrational enforcement of this law. Shortly after the law was enacted, according to newspaper reports, a BATF supervisor noted the requirement that cannons must be registered, and attempted to file charges against the City of Boston Parks Department for failure to register the 16-inch guns on the retired battleship Massachusetts.)

S. 1030 would deal with these abuses in several ways. First, it limits seizure to firearms actually used or involved in a violation. Secondly, that must be "willful" violation. Third, in the event the owner is acquitted of the charges or no charges are brought, the firearms must be returned. These safeguards are vital to insure that seizures are in fact not carried out in an unreasonable manner which violates the civil rights of law abiding firearms owners.

A fourth significant area relates to preventing repetitive actions by the government. Nothing in the Gun Control Act prohibits the government from simply attacking an individual in court until his resources are worn down and he is forced to concede. The government can and has simply continued with various actions not withstanding the citizen's vindication. They may prosecute the individual on a criminal case. If he or she is

acquitted, they may then go on to bring an action to revoke their federal firearms license, if they have one. If that fails, or they have not been required to be licensed, they may continue in an attempt to forfeit their firearms collection or inventory, based on exactly the same charges which underlay all the previous actions. We see no reason why a citizen, who has been found not guilty of charges by a jury, usually at an expense of several thousands of dollars for his own defense, should be forced by the government to defend himself yet again on the same charges. The government's attorneys are, of course, financed by the tax-paying citizen, including the individual whom they are now pursuing. By taking advantage of their economic position, a government agency can simply wear down the citizen, even if he is vindicated at each step of the process. A completely innocent individual can thus be economically ruined because of the ill will of agents and their determination to punish him. This is an enormous power which should not be permitted.

S. 1030 limits this power by providing that if an individual secures acquittal, forfeiture of his firearms or termination of a license cannot be premised on the same activities of which he was acquitted. The government has had its day in court; if it fails there, it should not be permitted to pursue the individual time after time until his resources are exhausted.

In addition to these major areas there are several areas in which S. 1030 will benefit law abiding firearms owners and protect their civil rights, as well as securing more efficient administration.

First, S. 1030 removes the necessity of obtaining a federal license and keeping records soly for the sale of ammunition. At the time the Gun Control Act was adobted, ammunition recordkeeping and licensing was included in the package by a narrow vote, presumably in the hopes that it might help law enforcement. In fact, since there are about six billion rounds of ammunition sold per year, the records are useless to law

enforcement and the agency enforcing the gun law has conceded as much. The recordkeeping on billions of rounds of ammunition merely adds to costs and paperwork burdens without securing any real benefit.

One survey of dealerships in the southwest region conducted by the enforcing agency, found that of the 25,000 total dealers, over 7,500 were licensed only because they dealt in ammunition. By removing these dealers, (largely country stores or convenience markets which sell small quantities of ammunition) from the licensing requirements we would signifcantly reduce the number of licensed dealers at no cost to law enforcement.

Second, S. 1030 would permit sales of firearms betwen non-residents of the same states where such would not violate any state law. The Gun Control Act of 1968 was enacted, at least in part, to deal with complaints that residents of states with strict firearms laws were purchasing by mail orders from dealers in other states. But the remedy adopted far exceeded the claimed problem. Rather than simply banning sales in violation of the purchaser's state of residence the Gun Control Act banned all interstate sales except between those holding licenses, then provided a series of exceptions from the rule to cover interstate inheritance, purchase of replacement firearms while on a hunting trip, and so on. This hodgepodge of rules serves no purpose except to permit prosecutions for technical infractions which in no way aid law enforcement. S. 1030 accordingly permits residents of different states to transfer a firearm each other so long as the transaction violates neither the law of the state where it occured nor the law of the purchaser's residence or the state to which he intends to take the firearm. If the state of Nebraska sees no reason to restrict purchase of firearms by its citizens, and the state of South Dakota sees no reason to restrict their sale, there is no reason why a transfer between a South Dakota and Nebraska resident should subject those two citizens to felony prosecution for committing a federal crime.

A third area of concern is limitation of administrative search. The Gun Control Act of 1968 gave the enforcing agencies a broad power to search a licensed dealer's business premises without warrant or even probable cause. In all too many cases this was abused by burdensome and lengthy searches intended to punish an unfriendly dealer or one who had spoken out against the agency. In other cases, inspectors were sent out to perform meaningless inspections simply to create "makework" for the agency. Citations were issued for meaningless errors or supposed errors in recordkeeping and identification. I attach to my testimony an example in which a licensed dealer in this area was given several citations for accepting Senate and Congressional identification as proof of a purchasers identity. S. 1030 would not eliminate the power of administrative search, nor even require a search warrant to undertake it, but it would put some controls upon the abuse of such power. If agents have no reason to believe that a dealer made an improper transfer, or that any of the guns he sold have been improperly used, they would never have reason to conduct an administrative search. If on the other hand they have reason to believe a dealer does behave improperly, or firearms which he has sold are involved in a criminal investigation, such an administrative search could be conducted. This is merely a rational approach to the allocation of law enforcement resources.

Finally, S. 1030 places restrictions on the ability of enforcing agencies to reveal information which they obtain from a licensee, They could still make use of this information to track down individuals who have misused firearms or otherwise violated the law, but this provision would limit abuses which have been known in the past and which centered upon revealing other information. Generally in these cases agents who were anxious to impress superiors with productivity would find a firearms collector who had obtained a federal dealers license in order that he might protect himself against a possible prosecution for

"engaging in the business". If he resided in an area zoned residential, the agents would transmit this information to local zoning authorities in an attempt to press them into harrassing the individual. When the individual resigned his license, the agents would then claim to their superiors that they had driven a "illegal dealer" out of business. S. 1030 would limit dissemenation of information in this way.

Mr. Chairman, on behalf of the NRA membership, we appreciate having been given the opportunity to testify in support of this most-important piece of legislation.

Mr. HULTMAN. Our final witness is Mr. Michael Beard, president of the National Coalition to Ban Handguns.

Mr. Beard, the committee has received your prepared testimony. You may proceed in any way that you feel comfortable. We would like to insert your prepared statement in the record as submitted, following your oral presentation. We can do that, and then you can highlight it.

STATEMENT OF MICHAEL BEARD, PRESIDENT, NATIONAL COALITION TO BAN HANDGUNS, WASHINGTON, D.C., ACCOMPANIED BY LEONARD B. SIMON, OF ARNOLD & PORTER, WASHINGTON, D.C.

Mr. BEARD. Thank you, Mr. Chairman. I do have a lengthy prepared statement that I would like to have entered into the record. For the purposes of this hearing, I simply will summarize what we had to say.

First, let me introduce the person who is accompanying me today, Mr. Leonard Simon of the Washington-based law firm of Arnold & Porter.

Mr. HULTMAN. Welcome to the committee, Mr. Simon.

Mr. SIMON. Thank you.

Mr. BEARD. Mr. Chairman, speaking on behalf of the 100,000 individual members and over 32 national organizations—religious, medical, legal, professional, labor, and educational associations and citizens' public interest groups—making up the National Coalition to Ban Handguns, we would like to take this opportunity to thank the chairman and the committee for this opportunity to testify today on legislation introduced by Senator McClure, S. 1030.

The NCBH is adamantly opposed to this assault on the Gun Control Act of 1968, and we firmly believe that passage of S. 1030 inevitably would result in more handgun-related deaths; more handgun-related assaults, accidents, and injuries; an increase in the criminal use of handguns; and an ever-greater fear of handgun violence that already exists today throughout this Nation.

This bill would yank out the few modest teeth of the 1968 Gun Control Act and make it harder for law enforcement officials to deal with gun-related crimes. The timing of these hearings is fitting in a very perverse way. A year ago John Lennon's shooting was yet another dramatic example to the world of how uniquely vulnerable the people of this country are to the arbitrariness and capriciousness of handgun violence. Now a year later this committee's hearings will provide an unintentional memorial to our national folly, as many of the backers of S. 1030 come forth to call for a rollback of Federal gun control legislation.

S. 1030 is officially known and has been known variously as the "Firearms Owner Protection Act" or the "Federal Firearms Law Reform Act of 1981." Only the likes of the National Rifle Association and Bonnie and Clyde could read this bill and say with a straight face that it is in any way a reform. It is not much of an exaggeration to say that if the street crowd had a lobby in Congress or if there were a national ruffians association, they would be pushing for this bill. Several of the bill's major provisions show you why.

For example, under the proposed reforms those charged with a Federal firearms violation would become a favored class of criminal defendants possessing certain rights which no other alleged law-breakers have. Specifically, firearms violators would be granted immunity from any subsequent civil proceedings if the Government failed to secure a criminal conviction. No other class of defendants is so protected.

If you are a convicted felon, there is a lot more good news in the so-called reform bill—buying, owning, and dealing in handguns and other firearms will be a lot easier.

Under current law, a felon is barred from possessing a firearm unless he or she successfully demonstrates a basis for an exemption to the proper Federal agency. Section 105(a) of the bill would turn current law inside out and force the Government to prove that a felon or other person prohibited from possessing or dealing in firearms should not in fact be allowed to do so.

Convicted felons are not the only ones who make out like bandits in this bill. Prospective felons have something to cheer about, also, because this bill would protect persons who employ a firearm in committing a felony but happen not to shoot anyone. The Gun Control Act currently provides that whoever "uses" or "carries a firearm unlawfully" during the commission, say, of a bank robbery is subject to additional penalties. But section 104(b) of the proposed legislation would specifically preclude application of these additional penalties to persons who carry or use a firearm during the commission of a Federal felony unless the firearm is "use(d) * * * against the person of another." In short, we now have a bill that protects the rights of handgun-toting bank robbers who can do their work without pulling the trigger.

Federal law enforcement officials will be seriously hamstrung in their efforts to investigate criminal use of firearms because of several provisions in S. 1030. BATF, or its successor agency, since the National Rifle Association's long campaign to eliminate the bureau is about to succeed—would be prohibited from conducting routine inspections to determine whether licensed firearm dealers are complying with the law. In addition, dealers would no longer be required to submit records to BATF upon request. The likely result of these and related provisions would serve to eviscerate law enforcement officials' ability to detect firearms violations and to trace criminally used firearms.

There are other totally unjustified reforms, such as a loophole that would permit persons to evade their home State's firearms laws by purchasing firearms in other States. Taken as a whole, this NRA-backed bill is nothing less than an assault to kill the 1968 Gun Control Act. It is also a vivid example of the NRA's meglomania about so-called rights of gun owners which, if indulged by Congress, will lead to an even easier access to firearms, including handguns, and a corresponding increase in handgun-related crime and accidents.

If this committee were to make some modest but useful steps in curbing the plague of handgun violence, it should look to the recent recommendations of the Reagan administration's Task Force on Violent Crime. A ban on the importation of handgun parts, a waiting period before a handgun is purchased, and a requirement

that gun owners report the theft of their handguns are all worthwhile supplements to current law.

In addition, the committee should consider minimum mandatory sentences for the illegal possession of a handgun that are currently on the books in Massachusetts and Connecticut, and that have been proposed by Governor Harry Hughes in Maryland. And, of course, an outright ban on "snubbies," those easily available and concealable handguns whose sole purpose is to kill a human being, should be part of any sensible legislation.

Unfortunately, Mr. Chairman, reason and commonsense have been strangers in most of the debates on handgun control. It is not too much to hope, however, that at least some of the Senators who have sponsored S. 1030 might go back and read what they have endorsed. If they did that, with a modicum of reason and commonsense, we could all be spared the unhappy consequences of this S. 1030.

As I review the witness list for this hearing, I cannot ignore the glaring omission—apparently intentional omission—of law enforcement representation. From our survey, there is a groundswell in the law enforcement community of strong opposition to this bill which might more honestly be titled "The Federal Felon's Relief Act."

In the last 10 years, 800 police officers were killed in the line of duty with firearms, and over 300,000 were assaulted in the same way.

Perhaps the supporters of S. 1030 should try to convince the widows and widowers, the sons and daughters, the mothers and fathers of dead law enforcement officers that this bill, which radically alters the firearm laws in this Nation, is not a police matter.

Earlier this morning, Mr. Chairman, we heard from Paul and Billie Hayes protesting their innocence. I would simply like to point out to you that a Federal court in New Mexico 2 months ago ruled that the BATF agents' actions in their case were "done with reasonable cause." I would like to submit for the record a copy of the order of the Federal judge in that case.

Mr. HULTMAN. Without objection, that will be made part of the record.

[Aforementioned material follows:]

IN THE DISTRICT COURT OF THE UNITED STATES IN THE DISTRICT OF NEW MEXICO

(Civil No. 79-124)

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

ONE HUNDRED SEVENTY FIREARMS AND FIFTY-FOUR THOUSAND FIVE HUNDRED TWENTY-EIGHT ROUNDS OF AMMUNITION, DEFENDANTS.

ORDER

This matter comes before the Court on the United States' Motion seeking the dismissal of the forfeiture herein and the issuance of a Certificate of Reasonable Cause pursuant to 28 U.S.C. 2465. The Court has considered the United States' argument that the claimants are collaterally estopped from contesting the issuance of such a Certificate, and has rejected that argument for the reasons stated in its Order of 14 January 1981. This Order follows the taking of testimony and the reception of evi-

dence concerning the search of claimants' premises, and the seizure of the firearms and ammunition, on 25 April 1978.

The court finds, based on the evidence before it, that:

1. The Bureau of Alcohol, Tobacco, and Firearms, and its agents and officers, had during the period material herein the responsibility to investigate criminal activities involving, *inter alia*, illegal sales of firearms;

2. Special Agent T. J. Alford, in the course of his official investigation of the claimants' activity, had become aware of the claimants' stated willingness to sell most or all of their firearms inventory in an unlawful manner;

3. Special Agent Alford had observed, or had been officially informed of, five such unlawful sales during April, 1978; and that;

4. Special Agent Alford had reasonable cause, on 25 April 1978, to seek authority to search the claimants' premises and to seize the firearms and ammunition here at issue.

The court concludes, therefore, that sufficient probable cause existed for the issuance of the search warrants which authorized the search of claimants' premises on 25 April 1978, and the seizure of 170 firearms and 54,528 rounds of ammunition.

Upon those findings and conclusions, the Court certifies, pursuant to the terms of 28 U.S.C. 2465, that the actions of the agents and officers of the Bureau of Alcohol, Tobacco, and Firearms who made or participated in the seizure of said firearms and ammunition were DONE WITH REASONABLE CAUSE.

The court being further advised in the premises, it is ordered that judgment as to the actual forfeiture of the firearms be, and it is, entered for the claimants' and the Complaint for Forfeiture be, and it is, dismissed. The Clerk of the Court is directed to provide two certified copies of this Order to the United States Marshal, as his authority to return all items not heretofore forfeited to the United States.

———— ————,
United States District Judge.

Mr. BEARD. Mr. Chairman, over the past years we have seen that no one is immune from handgun violence, not the President of the United States, nor a poet of peace; neither you nor I nor anyone in this room is immune.

The McClure bill, if it were to become a law, would only increase the proliferation of handgun violence in our Nation. Surely we do not want that to happen.

The National Coalition to Ban Handguns hopes that this committee will give a resounding no to the McClure bill.

Mr. HULTMAN. Thank you very much, Mr. Beard. I just have a few questions, if I may.

A recent newspaper article reported a statistically meaningful relationship between the size of a handgun, primarily length, and the criminal use of such guns. I believe you made reference to such a ban on so-called snubbies. Would you comment on that possibility? Is there a specific length or size that could reasonably be identified as a "crime prone gun" in your opinion?

Mr. BEARD. First, let me say that the National Coalition to Ban Handguns firmly believes that there ought to be a ban on the private possession of all handguns, not just the so-called snubbies. We feel that the time has come to say, no, we no longer need that particular instrument in our society. Our ultimate goal is to see a ban on the private possession of all handguns with the exception of police, military, licensed security guards, antique weapons, and collectors.

However, we think that there is a good case to be made for the snubbies, and that was made in that newspaper article. I would not want at this point to go into the technical details of what size and length, but certainly that is something that this committee, if it were seriously interested in looking at the question, could and should do to tighten up the current 1968 law.

Mr. HULTMAN. I take it from your comments, then, that with regard to the application of S. 1030 and some changes, you do not object to their application to rifles and shotguns, or does that simplify the issue?

Mr. BEARD. Our coalition is involved only in regulations on handguns. We simply do not have any position on whether legislation ought to be applied to long guns. That is not in our purview.

Mr. HULTMAN. Since any Federal enforcement effort on a sale of handguns must, as a practical matter, focus primarily on sales by a dealer in the ordinary course of business, why would you object to exempting for Federal regulation sales from a personal collection—again, going back to the distinction between an individual who is engaged in the sale of handguns for profit as opposed to someone who may be doing it for an avocation or a hobby?

Mr. BEARD. I would like to ask Mr. Simon to address that, if he would.

Mr. SIMON. Let me say, first of all, that I do not think there is a word about that provision in our comments. It is not a provision that we find to be one of the leading problems in the bill. I do believe in our comments last year we did make a point that that kind of exemption leaves open in the courts the question of whether a dealer operating out of his basement is selling from his private collection or from his business collection. This loophole enables people to claim in every case and argue to a jury in every case, that this illegal sale was in fact a sale from their personal possession.

Mr. HULTMAN. Thank you.

Mr. Beard, I take it from your testimony that there are certain provisions in the existing bill that are more offensive to the National Coalition than others. If you had to be politically realistic, which one, two, or three provisions do you feel in the bill should the committee look at the most seriously with regard to the impact that they would have on all citizens?

Mr. BEARD. I would have to give you exactly the same answer in reverse that Mr. Knox gave you. The entire bill is so objectionable and so ridiculous that there is nothing that we feel ought to be retained. It simply is a frivolous piece of activity. It has no business being brought before this committee at this time. We see nothing in it that we would want to defend.

As we said in our testimony, we would much rather have you look at the proposals made to the Reagan administration by the Attorney General's task force. Those at least have some specifics. They simply are not sufficient to deal with the issue.

If you are serious about the problem of handgun crime and handgun violence in this society, then you have to look at the problem of the availability of handguns. This bill does not do any of that.

Mr. HULTMAN. For the record, I might state that we do have legislation before the committee on the points that you suggested—the ban on importation of parts, the waiting period, the mandatory minimums, and others. The committee will probably address those in a different forum.

In addition, I would want to respond that we have not had the opportunity at this point in the hearing process to hear from law enforcement officials, but you raise a good point. They are, I think,

a very significant portion of the population that are affected by the bill. They will be asked to testify.

Mr. BEARD. I would certainly hope so, particularly law enforcement officials of the major urban areas where they have to deal daily with the trauma of handguns in our society.

I would like also, if I might, Mr. Chairman, to submit another document for the record inasmuch as the Bureau of Alcohol, Tobacco, and Firearms was not here to testify this morning. They prepared a factsheet on firearms enforcement in answer to some of the charges that were raised this morning and an answer to a factsheet distributed by the National Rifle Association. I think it would be important for the record that a copy of that "Facts on ATF Firearms Enforcement" be entered at this point.

Mr. HULTMAN. Without objection, that will be entered in the record.

I apologize for the absence of the Senator, but we continued a lot longer than we had anticipated and we did want to hear the other witnesses.

I might add that the testimony that we will be hearing on Friday will be from Mayor Barry of Washington, D.C., on behalf of the Conference of Mayors; Mr. Shields, who is president of Handgun Control, Inc.; a representative from the New York City Bar Association; and Mr. Snyder from the Citizens Committee to Keep and Bear Arms. Those will be our witnesses Friday.

Subject to the order of the chairman, we will now recess until Friday.

[Whereupon, at 12:55 p.m., the hearing recessed, to reconvene Friday, December 11, 1981.]

[Aforementioned factsheet and prepared statement of Michael K. Beard follow:]

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FACTS ON ATF FIREARMS ENFORCEMENT—JUNE 1981

The National Rifle Association alleges in its "Qualitative and Quantitative Analysis of BATF Enforcement Policies" that ATF Special Agents are not productive and the quality of cases is low. These allegations are unfounded and based on inaccurate interpretations of budget data and distortions of the realities of ATF firearms cases.

NRA states ATF has 1,463 Special Agents in firearms enforcement when in fact there are 912. The remainder of the positions cited by the NRA are support and clerical. There were 912 arrests instead of the 840 quoted. There were 1.01 arrests per agent not the 0.57 NRA said and 0.99 staff years per arrest not the 1.74 calculated by the NRA. ATF productivity compares favorably with the FBI which had 1.13 arrests per agent and 0.88 staff years per arrest for the same period.

A review of ATF enforcement effort and productivity over a recent 18-month period shows: 2,017 cases recommending 3,824 defendants for prosecution, 79.2 percent accepted for prosecution, 90 percent conviction rate, 67 percent with prior criminal records, 45 percent convicted felons.

NRA alleges that ATF case quality has been aimed at law abiding gun owners. A breakdown of ATF cases shows: 25.2 percent narcotics traffickers, 9.2 percent organized crime figures, 10.2 percent international traffickers (IRA, revolutionaries, etc.), 10.7 percent outlaw motorcycle gangs and hate groups (KKK, Nazi), 22.3 percent interstate firearms trafficking, 31 percent gangster type weapons (machineguns and silencers), 2.5 percent licensed dealers, 2.2 percent claimed to be collectors.

NRA alleges ATF abuses civil rights and employs entrapment. A review of these 2,017 cases reveals: defense of entrapment claimed 58 times; upheld—0; violations of civil rights claimed 23 times; upheld—0.

The NRA "Fact" Sheet includes a quote from a retired law enforcement witness before a Congressional committee who stated that 75 percent of ATF defendants

have been enticed into violating the law. This individual was, at the time, a paid consultant of the NRA. His testimony consisted of personal "recollections" of cases he claims to have reviewed. The witness did not bring any substantiating data before the committee.

NATIONAL RIFLE ASSOCIATION OF AMERICA,
INSTITUTE FOR LEGISLATIVE ACTION,
Washington, D.C.

FACT SHEET—QUALITATIVE AND QUANTITATIVE ANALYSIS OF BATF ENFORCEMENT POLICIES

General: the most complete figures available are from the Bureau of Alcohol, Tobacco and Firearms appropriations hearings in the House, February 28, 1980. There they gave the following figures for fiscal year 1979: Firearm Criminal Enforcement Budget: $52,852,000; Firearm Criminal Enforcement Personnel: 1,463; Firearm Case Recommendations for Prosecution: 1,072; Firearm arrests not given: figures obtained elsewhere indicate: 840.

This would indicate the following: Prosecution recommendations per agent per year: 0.73; Arrests per agent: 0.57; Agent-years per arrest made: 1.74; Budget per arrest: $62,919; Budget per prosecution recommendation: $49,302.

To be sure, the criminal enforcement function does include matters other than pure federal gun law enforcement, such as relief investigations and state assistance. However, of the 1,463 firearm law enforcement positions, only 4 are for state and local assistance, only 43 for relief investigations, and 122 for "selected program support", which is not defined. Excluding these would raise the personnel-years per arrest to 1.2 agent-years per recommendation and 1.54 per arrest. By any measure, agents enforcing federal gun laws are producing well less than one arrest per agent per twelve months of employment.

BATF also gave some productivity figures at p. 164 of the hearings. These indicated they undertook 9,959 firearms investigations, but only 1,072 led to a recommendation for prosecution. This is 10.7 percent. They also indicated that 89 percent were accepted by the U.S. Attorney, which would reduce this to 9.5 percent or about 954 cases accepted.

They further indicated that the average amount of effort devoted to each firearms criminal case was up to 19.3 staff-days. We can use this figure to obtain an indication of how much BATF effort in the firearms field may be useful and how much is wasted effort, given an approximate work-year of 231 days (eleven 21-day work-months) and their personnel figures given above.

BATF's fiscal year 1982 budget estimates give more updated (albeit less complete) information. From these:

[Dollar amounts in millions]

	1980	1981	1982
Firearms agents	1,226	1,140	1,140
Firearms budget	$49.245	$50.947	$53.615
Firearms arrests	838	845	865
Cost/arrest	$58,764	$60,292	$61,982
Arrests per agent	0.68	0.74	0.75
Agents/arrest	1.46	1.34	1.31

WORK RESULTING IN PROSECUTION

Here we must use BATF's figures from the House hearings, since these give the number of cases accepted for prosecution; 954 cases accepted by U.S. Attorney times 19.3 staff-days equals 18,412 staff days usefully spent 231 days per work-year equals 79.7 work-years usefully spent by BATF criminal firearms staff.

This would indicate that the "productive" work of BATF criminal enforcement could be undertaken by about 80 agents working at full efficiency. Presently, they employ 1,463. (This is maximum that could have been useful: obviously, some accepted cases were bad, as well, witness the abuse hearings).

OVERALL WORK

Even if nonproductive work is included, it is obvious that an appreciable part of BATF is featherbedding; 9,959 total investigations times 19.3 staff days equals 192,208 staff days 231 equals 832 staff years total. Obviously, even if we count in the 90.5 percent of investigations that lead to no useful end, only a little over half of BATF's 1,463 firearms enforcement personnel are working at any time.

Note.—This is not subject to explanation that some firearms agents are performing non-firearms related tasks thus offsetting these figures. BATF indicates that they spent 1,652 staff-years on firearms. Hearings, p. 164. This would indicate, since they claim only 1,463 staff in that area, that some of their regular staff from other areas are being brought in, or that substantial overtime is being used. Thus the figures above would be even worse if based on number of people actually employed in the firearms area rather than just those formally listed as firearms personnel.

QUALITY OF CASES

Obviously, the above figures deal only with case quantity, not quality. Indications are that, for even this limited number of cases, BATF case quality is atypically bad. Historically, BATF prosecutions have been directed predominantly toward law-abiding gun owners and have centered upon entrapment into malum prohibitum technical offenses. Mala prohibita require no proof of illicit intent or bad motivation; they are therefore easily prosecuted and susceptible to abuse. Normally, their ease of prosecution would mean that undercover enticement would be unnecessary. This type of case by its very name invites abuse. Yet, these are precisely the type of cases BATF has chosen to undertake. The worst abuses have occurred under the guise of pursuing those who are "engaged in the business of dealing" in firearms without a license. Not only is this malum prohibitum—so that a citizen locking knowledge that his acts could be considered "engaging in the business" can be convicted—but the term itself has no definition in terms of whether one must advertise, sell five guns, etc., in order to be so engaged. Agents customarily approach a gun collector with perhaps a hundred guns in his collection and induce him to make two completely legal sales. They then return months later and buy two more. Usually four sales in six months is enough to support a prosecution for having engaged in the business, and prosecutions on as few as two have been reported. They will also confiscate his entire collection claiming that it was intended for use in a violation of law.

Objective indicators of quality of prosecution are hard to come by. The following indicate that BATF is predominantly ignoring valid cases (e.g., felons in possession of guns, or using sawed-off shotguns) and instead focusing on collectors and honest citizens:

(1) In oversight hearings before their Senate Appropriations Subcommittee, July 11, 1979, Vernon Acree, former Customs Commissioner and 40-year federal law enforcement veteran, testified that he had investigated a large sample of recent BATF cases in Virginia and Maryland. His conclusion:

"Based on my recollection of the hundreds of cases that we reviewed in the jurisdictions and the points I mentioned, I would say that conservatively, 75 percent to 80 percent of those cases were individuals that, in my judgement, would not have fallen into the hands of the law if they had not been enticed, inveigled, encouraged to violate some provision of law which I am personally satisfied they were totally unfamiliar with. I found in the main those individuals were blue-collar workers, truck drivers, farmers, individuals that simply were not sophisticated enough to understand the technicalities of the Gun Control Act." (Hearings, pp. 17-18.)

(2) At the same hearings, BATF indicated that the average value of guns confiscated is $108.29. (Id., p. 424). This is the value assigned by BATF which is generally much lower than the real value. Even so, it is over twice the value that BATF claims is the average of "crime guns". BATF estimates put the value of crime guns under $50. Obviously, guns confiscated by BATF and "crime guns" are two totally different species.

(3) BATF later indicated that, in the year preceding those hearings, only 14.5 percent of their gun arrests were of felons in possession, and only 0.2 percent for sale to felons. 22.1 percent were for "engaged in the business". (Oversight hearings, April 17, 1980, p. 213).

At the July, 1979 hearings, BATF announced "reforms". In the words of its director, "I intend to insure that the activities of this agency are aimed at criminal activities, significant criminal activities of the type that I think we all agree should be suppressed." (p. 382). In the April, 1980 hearings, questions were asked to determine

if there had been changes for the better. Uniformly, matters had gone from bad to worse:

Percent of cases involving felons in possession: DOWN one-third, from 14.3 percent to 9.8 percent.

Percent involving sale to felon: Stable at a miniscule 0.2 percent (reflecting one out of the 543 cases brought in that 9-month period).

Percent involving "engaged in the business" up from 22.1 percent to 23 percent.

Average value of guns being confiscated: up from $108.29 to $115.97. (April, 1980 hearings at p. 212-213).

In short, the quality of cases had not improved after the supposed reforms; in every area it had remained stable or worsened. Fewer cases were being brought against felons in possession—no less than a third fewer—more were being brought on technical "engaged in the business" charges, and the value of confiscated guns was increased, indicating more concentration on collectors' items and less on street guns.

STATEMENT OF

MICHAEL K. BEARD, PRESIDENT
NATIONAL COALITION TO BAN HANDGUNS

BEFORE

THE COMMITTEE ON THE JUDICIARY
UNITED STATE SENATE

December 9, 1981

Mr. Chairman and distinguished Members of this Committee:

My name is Michael K. Beard and I am President of the National Coalition to Ban Handguns (NCBH). I am accompanied today by Leonard Simon of the Washington based law firm Arnold & Porter.

On behalf of the over 100,000 individual members and the over thirty national religious, medical, legal, professional, labor, and educational associations and citizen public interest groups making up the National Coalition to Ban Handguns, I would like to thank the Chairman and the Committee for the opportunity to testify today on the legislation, S 1030, introduced by Senator McClure.

The NCBH is adamantly opposed to this assault on the Gun Control Act of 1968 and we firmly believe that passage of S 1030 would inevitably result in more handgun-related deaths, more handgun-related accidents and injuries, an increase in the criminal use of handguns, and an even greater fear of handgun violence than already exists today throughout our great nation.

I would like to emphasize at the outset of this testimony that the NCBH favors restrictions in the availability of handguns only. The NCBH does not call for regulations or laws that would restrict long guns. Our reasoning is quite simple: although handguns comprise only one-quarter of the total firearms population in America, they account for 80 to 90 percent of the firearms crimes and abuses. It is estimated that there are over 35 million handguns in America today, with another 2 million added every year. Our society is a handgun arsenal.

Mr. Chairman, I know you and your colleagues are well aware of the escalating handgun violence problem in our nation. It is estimated that 300,000 violent crimes were committed with handguns last year alone. Everyday, over 60 Americans are killed with handguns. According to the Federal Bureau of Investigation's Uniform Crime Report released in September, 23,044 Americans were murdered in 1980. Fifty percent of these murders involved handguns. That is one handgun murder every 46 minutes.

Homicides are not the only type of death caused by handguns. In 1978, the most recently compiled year, handguns were used in an estimated 10,000 suicides and 1100 fatal accidents. Since many of these accidents involve children, the Surgeon General's Select Panel on the Promotion of Child Health earlier this year recommended a ban on the sale of handguns.

The bill now being examined would, if passed, make an intolerable situation only worse. Although the McClure legislation is labeled under the guise of "A bill to protect firearms owners constitutional rights, civil liberties and rights of privacy," S 1030 would, in effect, gut the Gun Control Act of 1968

(18 U.S.C. §§921-28), which provides limited but important controls over the possession and transfer of handguns.

The McClure bill is fraught with inadvisable provisions. To simplify matters, we will focus upon our four principal objections to the legislation:

1) The bill would prohibit the Bureau of Alcohol, Tobacco and Firearms (BATF) -- or its successor agency -- from conducting routine inspections to determine whether licensed firearm dealers are complying with the law. BATF has been the federal agency within the Treasury Department responsible for enforcing federal firearms laws. This agency is, however, being phased out by the Reagan Administration and it appears that the Secret Service will be given this responsibility in the future.

2) The bill would make those charged with firearm violations a preferred class of criminal defendants with procedural advantages which do not exist in any other area of the law.

3) The bill would protect persons who employ a firearm in committing a felony, but happen not to shoot anyone.

4) The bill would permit persons to evade their home states' firearms laws by purchasing firearms in other states.

I. THE BILL WOULD PROHIBIT BATF FROM CONDUCTING ROUTINE INSPECTIONS OF GUN DEALERS' PREMISES AND WOULD WATER DOWN RECORD-KEEPING REQUIREMENTS

The proposed bill would make it almost impossible for the federal government to detect violations of the Gun Control Act of 1968 by licensed firearms

dealers. Routine inspections of business premises, vital to BATF and many other agencies, would be prohibited. Under these bills, BATF could only inspect premises if it "has probable cause to believe a violation . . . has occurred, and that evidence thereof may be found on such premises" (Section 103[g]). There is no justification for this obstruction of normal agency inspection procedures.

Senator McClure, attempting to explain this provision in the last Congress, stated that it was an attempt to comply with the Supreme Court's ruling in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).[1] Although we applaud Senator McClure's apparent transformation into a civil libertarian, the Marshall case does not suggest or support this provision whatsoever.

In Marshall, which involved a challenge to an inspection by the Occupational Safety and Health Administration (OSHA), the Supreme Court specifically noted that firearms dealer inspections had historically been permitted, were highly appropriate and perfectly lawful, and would not be affected by any ruling concerning OSHA inspections. 406 U.S. at 313.[2] Thus, Marshall does not support this provision at all. Worse yet, the bill would impose requirements on BATF far greater than those imposed on OSHA under the Marshall decision.[3] There is simply no basis for this unwarranted change in the law.

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[1] 125 Cong. Rec. S. 14116 (daily ed. October 5, 1979).

[2] The Court has also noted, in upholding warrantless searches of licensed firearms dealers, that "close scrutiny of [firearms] traffic is undeniably of central importance to Federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders." United States v. Biswell, 406 U.S. 311 (1972).

[3] In Marshall, the Court required only that OSHA searches be pursuant to a "general plan for enforcement" based on "reasonable administrative

[Footnote continued on following page].

The goal of effective law enforcement is made more difficult by the fact that the bill would also reduce record-keeping requirements for firearm dealers. Section 103(c) would reverse current law and allow dealers to sell firearms from their "personal" collections free from record-keeping requirements. Such a provision would create a major loophole, for violators could claim in any case that the firearm was sold from a personal collection.[4] Further, Section 103(g) removes the present requirement that licensees must submit records to the BATF upon request and provides only that such records must be "maintained." No provision is made for allowing the BATF to inspect these records. When coupled with the provisions discussed above forbidding inspections of premises and records absent probable cause, these provisions would serve to eviscerate the BATF's ability to detect violations and trace firearms.[5]

II. THE BILL WOULD PROVIDE PREFERRED TREATMENT TO PERSONS CHARGED WITH FIREARMS VIOLATIONS

The proposed bill would make those charged with violating the Gun Control Act

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[Footnote continued]
standards," rather than being merely an arbitrary selection of one or more particular establishments. 436 U.S. at 320-21. The McClure bill, on the other hand, would require BATF to show probable cause to believe that a violation had occurred in order to inspect the premises of any dealer.

[4] See United States v. Currier, 621 F.2d 7, 9 (1980) ("[requiring record-keeping for a dealer's personal collection] is without doubt correct; otherwise the federal regulations could be circumvented altogether by dealers who were slick enough to establish 'personal collections' for otherwise unlawful sales").

[5] For example, these provisions would make it nearly impossible to determine if a dealer was eligible to have his license renewed, since the BATF could not inspect his records unless they had probable cause to believe that a violation had occurred.

of 1968 a favored class of criminal defendants possessing rights which no other alleged lawbreakers have. Several components of the bill are objectionable in this respect.

One radical change is reversal of the principle that a party seeking exemption from a law must demonstrate a basis for the exemption. Section 105(a) would make the exception into the rule by mandating that a felon who applies for relief from federal laws restricting firearms ownership shall have such relief unless it is established by the federal government that he\she may be considered dangerous to public safety. Thus the Government's discretion to deny relief will be severely limited. This provision would turn the 1968 Act inside-out and force the federal government to prove that a felon or other person prohibited from possessing or dealing in firearms should not in fact be allowed to do so. Surely the presumption should be that such a person should not be allowed relief from the disabilities imposed by federal firearms laws, and that such persons should have to convince the Government of the propriety of an exemption as is currently the case.[6]

Second, the bill would provide firearms violators immunity from any subsequent civil proceedings if the Government failed to secure a criminal conviction.

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[6] To add insult to injury, the McClure bill would also provide that, in any case where BATF determined not to give an exception to the restrictions of the 1968 Act, the individual could obtain de novo review of that decision in federal court. In these days of congested court dockets, it is mind-boggling that Congress would burden the federal courts with full trials concerning the question whether a convicted felon should be given an exemption to the prohibitions of the Gun Control Act.

Section 103(e) would preclude license revocation proceedings following an unsuccessful criminal prosecution, while Section 104(c) would likewise bar civil forfeiture of firearms, even if they were illegally possessed. No other class of defendants is so protected. The settled rule is that an unsuccessful criminal prosecution does not bar a subsequent civil proceeding based on the same acts,[7] and courts have expressly upheld subsequent forfeiture proceedings after unsuccessful prosecutions for violation of the Gun Control Act.[8] Such a rule is justified by the fact that in criminal prosecutions, the government must meet a higher standard of proof and must also prove intent. Thus, an acquittal means nothing more than that the jury determined that the prosecution had not proven guilt (and intent) beyond a reasonable doubt.

Third, Section 104(a) of this bill would preclude prosecution unless the Government can prove a "willful" violation of the 1968 Act. Yet ignorance of

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[7] Stone v. United States, 167 U.S. 178, 188 (1897) (United States not barred from bringing civil action to recover value of timber from public land despite defendant's acquittal in criminal trial based on same allegation); One Lot Emerald Cut Stones and One Ring v. United States, 409 U.S. 232, 235 (1972) (Customs Service can institute forfeiture proceedings against person acquitted of smuggling); Harary v. Blumenthal, 555 F.2d 1113, 1116 (2d Cir. 1977) (bribery acquittal no bar to proceeding to disbar accountant from practice before IRS); Securities and Exchange Commission v. Everest Management Corp., 466 F.Supp. 167, 174 n.9 (S.D.N.Y. 1979) (acquittal on securities charge has no preclusive effect in subsequent administrative proceeding to obtain permanent injunctive relief).

[8] See, e.g., Glup v. United States, 523 F.2d 557 (8th Cir. 1975); United States v. Ten Firearms & Twenty-Four Rounds, 444 F.Supp. 305 (N.D. Tex. 1977).

the law is generally no defense.[9] "Willful" has generally been defined to require action taken with the knowledge that it is illegal and with a malicious purpose.[10] The federal government should not be put to this often impossible burden. This is especially true where such a strong public interest as the control of handguns is at stake.

Another "bonus" for firearms violators is that the bills would permit alleged firearms violators to obtain attorneys fees from the Government in circumstances in which other citizens are not so benefitted. Section 104(c) requires attorney fees to be awarded to all persons who prevail against the Government in an action relating to the seizure of firearms. Yet the general rule is that attorneys fees are not awarded to successful litigants,[11] and in the few areas in which Congress has determined that an incentive is needed to permit citizens to bring suits -- e.g., civil rights actions -- fees may be awarded in the discretion of the court. Finally, Section 104(c) would permit attorneys fees to be awarded in any case under the 1968 Act where the Government has acted "without foundation." This vague standard will permit defendants to make a colorable claim for attorneys fees in every case which the Government loses.

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[9] United States v. Currier, 621 F.2d 7,9 (1980) ("courts have repeatedly held that ignorance of the law is not a defense in prosecution for violations of the federal firearms law").

[10] See, e.g., Prino v. Simon, 606 F.2d 449 (4th Cir. 1979). Further, in criminal areas "willfully" is defined as including a malicious or bad purpose. United States v. Sirhan, 504 F.2d 818 (9th Cir. 1974).

[11] Alyeska Pipeline Service v. Wilderness Society, 421 U.S. 240 (1974).

Additionally, Section 104(b) provides for a unique self-defense exemption from the additional criminal penalties imposd by the 1968 Act for the use of firearms in the commission of a federal felony. Yet the exemption is very broad, and unlike other areas of the law, places no limits on the use of deadly force to be used in defense of any property.[12] There is no reason why persons charged with firearms violations should have a broader self-defense claim than that afforded in all other areas of the law.

Nowhere do the sponsors of this legislation explain why this group of criminal defendants should be preferred with regard to any of the issues discussed above. We submit that there is no basis for any of these provisions.

III. THE BILL WOULD PROTECT PERSONS WHO EMPLOY A FIREARM IN COMMITTING A FELONY, BUT HAPPEN NOT TO SHOOT ANYONE

The Gun Control Act of 1968 currently provides that whoever "uses" or "carries a firearm unlawfully" during the commission of a felony is subject to additional penalties. 18 U.S.C. § 924(c)(1976). Yet Section 104(b) of the proposed legislation would preclude application of these additional penalties to persons who carry or use a firearm during the commission of a federal felony unless the firearm is "use[d] . . . against the person of another."

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[12] Compare Model Penal Code §§ 3.04-.06; Restatement (Second) of Torts §§ 63, 65, 67 (1965).

This vague standard, nowhere defined, suggests that as long as a felon does not actually shoot anyone, no additional penalties will be attached for the possession and use of a deadly weapon when violating the law. In short, we now have a bill that protects the rights of handgun-toting bank robbers who can do their work without pulling the trigger.[13]

IV. THE BILL WOULD ALLOW PERSONS TO EVADE STATE FIREARMS LAWS

Current law prohibits the transfer into or receipt of firearms purchased outside the state into the state where one resides. Yet Sections 102(c) and (d) of this bill would reverse current law and permit persons to transport into or receive in the state where they reside firearms purchased out-of-state unless such purchase was illegal in that state or the state where the purchase occurred. There are over 20,000 local, state, and federal firearms statutes in the United States. We do not believe it is realistic to think that a handgun dealer will be aware of an out-of-state resident's local laws. Since many of states have record-keeping requirements for firearms dealers (but not purchasers), under the proposed legislation, these laws could be evaded simply by purchasing handguns outside the state.[14] The sale would be legal in both states, but the home states would have no record of the purchase. Such evasion of state law should not be permitted.

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[13] Also, Section 101(f) would change current law and allow a person who has been convicted of a state misdemeanor firearms charge to deal in firearms.

[14] The problem is exacerbated since Section 103(g) limits the extent to which BATF can exchange information with state governments. Thus, as is clear, the McClure bill would greatly curtail the government's ability to keep track of firearms.

We have outlined above our principle objections to the McClure bill. It is clear that S 1030 would make significant changes throughout the Gun Control Act of 1968 and would hinder its enforcement.

Yesterday a year ago, John Lennon, a worldwide symbol of nonviolence, was gunned down with a handgun in the streets of our largest city. Lennon's death was yet another example to the world of how uniquely vulnerable people are in this democratic country to handgun violence. A year ago today, the London New Standard wrote, ". . . [Lennon's] meaningless murder is increasingly typical of New York and the United States in general, where the freedom to carry guns has brought forth monsters." The United States is not providing a good example to the rest of the world when it comes to handgun-related death and violence.

Mr. Chairman, one of your colleagues said in 1967:

> We have a responsibility to the victims of crime and violence . . . It is a responsibility to put away childish things, to make the possession and use of firearms a matter under-taken only by serious people who will use them with the restraint and maturity that their dangerous nature deserves -- and demands.

That colleague, Robert F. Kennedy, no longer sits in the Senate because a handgun took his life.

Taking into account our above objections, the McClure bill simply cannot be perceived as responsible legislation. In fact, the real benefactor of this bill is not the average American, but prospective and convicted felons. Surely this is not the direction in which we wish to move as a nation.

The NCBH believes the real issue at hand is how to combat handgun violence in the United States. We believe that some modest but useful steps in curbing the plague of handgun violence should not include the provisions of the McClure bill, but the recent recommendations of the Reagan Administration's Task Force on Violent Crime. These proposals include a ban on the importation of handgun parts, a waiting period before a handgun is purchased and a requirement that owners report the theft of handguns to law enforcement officials. They are all responsible, worthwhile supplements to the current law. And, of course, an out-right ban on "snubbies," those easily concealable handguns whose sole purpose is to kill a human being, should be part of any sensible legislation.

Mr. Chairman, over the past year we have seen that no one is immune from handgun violence -- not the President of the United States, nor a prophet of peace. Neither you nor I nor anyone in this room is immune. The McClure bill, if it were to become law, would only increase the proliferation of handgun violence in our nation. Surely, we do not want this to happen.

Last December, the London Daily Telegraph wrote:

> A man who lived with a philosophy of peace has perished by the gun. In the sixties the Beatles were a symbol of the culture of the times. Lennon's death has some grim meaning, if we know where to look for it, for the eighties.

The National Coalition to Ban Handguns hopes that the Committee will give a resounding "no" to the McClure bill.

Thank you Mr. Chairman.

THE FIREARMS OWNER PROTECTION ACT

FRIDAY, DECEMBER 11, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:05 a.m, in room 2228, Dirksen Senate Office Building, Senator Charles E. Grassley (acting chairman of the committee) presiding.

Staff present: Eric Hultman, general counsel; from the office of Senator Grassley, Lynda Nersesian, counsel.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. This hearing will come to order.

Today marks the second day of hearings on S. 1030, the Firearms Owner Protection Act, better known as the McClure-Volkmer bill. I had the pleasure of chairing most of Wednesday's hearings on this legislation. I was happy to accommodate Chairman Thurmond then and I am happy to accommodate him today by chairing this hearing again.

On Wednesday, among the witnesses who testified in strong support of the bill were the prime sponsors, Senator McClure and Representative Volkmer. Their testimony emphasized the generic history of abuses under the Gun Control Act of 1968. Other congressional witnesses included Senators Burdick and DeConcini.

A number of witnesses from the citizenry testified as to their encounters with the Bureau of Alcohol, Tobacco, and Firearms. I heard many examples of raids by agents of this bureau during early morning hours and confiscation of gun collections for what appears to be and what have not been proved to be other than bookkeeping errors. The witnesses explained that it was like being treated as felons for possessing what is rightfully within the bounds of the second amendment.

What was emphasized by these witnesses is that there is virtually no provision of the Gun Control Act which covers real criminal conduct by real criminals. Instead, the law has created a crime from intrinsically innocent acts and created a whole class of criminals from an innocent body of our citizenry.

I found the testimony of the National Rifle Association to be particularly logical: We can control crime only by controlling the criminal, not by controlling guns. I believe that the law enforcement energies of this country should be directed at the criminal element, and not at hard working, law abiding, honest citizens.

Today our first witness is Senator Orrin Hatch from the State of Utah. Senator Hatch has been one of the Senate's foremost leaders in this area of responsible gun legislation.

Senator Hatch, it is my privilege to welcome you as a witness on this very important bill. I would like to tell the audience that you are also a member of this committee, the distinguished chairman of the Constitution Subcommittee, and a person who I know as a fellow member of this committee works hard and diligently on legislation with a purpose of serving your country well, and you have done that.

Senator HATCH. Thank you so much, Mr. Chairman.

Senator GRASSLEY. Would you like to proceed?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman.

I would ask that my full remarks be placed in the record as though fully delivered here.

Senator GRASSLEY. They will be included, without objection.

Senator HATCH. Thank you so much.

Richard Henry Lee, Virginia delegate to the Continental Congress, initiator of the Declaration of Independence, and member of the first Senate, which passed the Bill of Rights, had this to say: "To preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them."

Patrick Henry, in the Virginia Convention on the Ratification of the Constitution, said: "The great object is that every man be armed. * * * Everyone may have a gun."

James Madison, the author of the Bill of Rights, in his Federalist Paper No. 26, said: "The advantage of being armed * * * the Americans possess over the people of all other nations. * * * Notwithstanding the military establishments in the several Kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms."

The second amendment of the Constitution says: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

In my studies as an attorney and as a U.S. Senator and as chairman of the Constitution Subcommittee, I have constantly been amazed by the indifference or even hostility shown the second amendment by courts, legislators, and commentators. James Madison would be startled to hear that his recognition of a right to keep and bear arms, which passed the House by a voice vote without objection and hardly any debate, has since been construed in but a single and most ambiguous Supreme Court decision, whereas his proposals for freedom of religion, which he made reluctantly out of fear that they would be rejected or narrowed beyond use, and those for freedom of assembly which passed only after a lengthy and bitter debate, are the subject of scores of detailed and favorable decisions.

Thomas Jefferson, who kept a veritable armory of pistols, rifles, and shotguns at Monticello, and advised his nephew to forsake

other sports in favor of hunting, would be astounded to hear supposed civil libertarians claim firearm ownership should be restricted.

Samuel Adams, a handgun owner who pressed for an amendment stating that the "Constitution shall never be construed * * * to prevent the people of the United States who are peaceable citizens from keeping their own arms," would be shocked to hear that his native State today imposes a year's sentence without probation or parole for carrying a firearm without a police permit.

This is not to imply that courts have totally ignored the impact of the second amendment in the Bill of Rights. No fewer than 21 decisions by the courts of our States have recognized an individual right to keep and bear arms, and a majority of these have not only recognized the right but invalidated laws or regulations which abridged it. Yet in all too many instances courts or commentators have sought, for reasons only tangentially related to constitutional history, to construe this right out of existence.

They argue that the second amendment's words right of the people mean a right of the State. Apparently overlooking the impact of those same words when used in the first and the fourth amendments to the Constitution. The right of the people to assemble or to be free from unreasonable searches and seizures is not contested as an individual guarantee. Still, they ignore consistency and claim that the right to bear arms relates only to military uses. This not only violates a consistent constitutional reading of right of the people but also ignores that the second amendment protects a right to keep arms as well as bear them.

These commentators contend instead that the amendment's preamble regarding the necessity of a well regulated militia * * * to a free State means that the right to keep and bear arms applies only to the National Guard. Such a reading fails to note that the Framers used the term militia to relate to every citizen capable of bearing arms, and that Congress has established the present National Guard under its power to raise armies, expressly stating that it was not doing so under its power to organize and arm the militia.

I have long regarded the right of Americans to keep and bear arms as among the most vital rights recognized in the Bill of Rights. I say recognized, not created because in my view that right, the right of free men to be armed and to defend themselves, their families, and their free institutions, is the gift of the Creator, not of the first Congress, as I might add the Declaration of Independence clarifies with the words: "We hold these truths to be self-evident, that all mean are created equal, that they are endowed by their Creator with certain inalienable rights."

Perhaps I could trace briefly the process by which this right was incorporated into our Constitution. My remarks do contain a historical analysis and a tracing, a brief tracing of just how the right to keep and bear arms was incorporated in the Constitution.

In closing, I would like to say that the rights of individuals under the second amendment have become the focus of considerable concern recently. Accordingly, the Subcommittee on the Constitution conducted public hearings into the constitutional and civil rights ramifications of enforcement of Federal firearms laws in Septem-

ber of last year. The results were, to say the least, both impressive and shocking.

The hearings were called to examine whether individual second amendment rights were being abridged without proof of criminal intention on the part of individuals investigated by the Federal enforcement agency. The subcommittee made several inquiries about potential violations of this constitutional right. Those inquiries touched upon several areas of constitutional concern.

Among them was the earlier discovery of a memorandum sent to the director of the enforcing agency, the Bureau of Alcohol, Tobacco, and Firearms [BATF] which admitted that due to recordkeeping problems within the Bureau it might convict an innocent man. When existence of that memorandum was discovered in civil litigation against the Bureau, it went so far as to plead executive privilege to prevent its publication.

The subcommittee also requested a response to charges that agents of the Bureau had shot and seriously injured a Maryland citizen named Kenyon Ballew during a raid in which the search warrant was secured by false and misleading affidavits. BATF's response to these queries was insufficient, and the subcommittee elected to conduct oversight hearings.

We heard from a number of law-abiding citizens whose second amendment rights were ignored in the course of Federal firearms enforcement. Three testified in person. All three were firearms collectors of clean record and good repute. One, Bob Best, had been advised by agents that in light of his making but a few sales from his collection, he need not become a dealer or secure a dealer's license. Agents then made a few purchases from him and arrested and charged him with engaging in the business. Fortunately, charges were dropped a few days before trial but that does not alleviate his complaint that he had to spend money defending himself in a case that should not otherwise have been brought.

Another, Robert Wampler, testified before the committee earlier this week. He was charged with engaging in the business based on two or three sales from his collection, and his entire collection, many of them rare and finely engraved firearms, more works of art than anything else, were taken from his home. No charges were ever brought but Mr. Wampler waited 3 years for the return of the collection.

The third, David Jewell, had a collection which included a $7,000 collector's shotgun taken and maliciously damaged. It and other firearms were deliberately dropped on a concrete floor before his eyes.

The subcommittee also received a number of written statements from victims, ordinary and honest citizens who had been victims of entrapment, prosecution for minor and unintentional violations, and unreasonable searches and seizures. At the same time, we received evidence that serious offenders were being ignored by agencies charged with enforcement.

Two Illinois judges wrote to the committee to comment that enforcing agencies had refused to bring charges against felons who had been apprehended in possession of sawed-off shotguns. One of the witnesses testified that he had himself referred a case to BATF which involved interstate transportation of a stolen gun collection,

yet the same agents who saw fit to raid and arrest the witness were not interested in the very real law violation.

In short, it was apparent that the existing Federal firearms laws were employed to harass honest firearms owners, while the very real criminal problems were left largely untouched. In light of this evidence it is hardly surprising that a majority of this committee and indeed a majority of our House of Congress have cosponsored S. 1030. Our oath to uphold the second amendment and our duty to the citizens of this Nation demands no less.

S. 1030's changes are simply good law enforcement. There is no reason to prosecute on Federal felony charges a citizen who has not willfully violated the law. There is no reason to withhold confiscated firearms after their owner has been cleared of all charges. There is no reason why a citizen whose firearms have been illegally seized and who secures their return should not be entitled to reimbursement for legal expenses.

If we are serious in our object of preventing unconstitutional and abusive acts, we must not permit legal standards which allow such acts. Crime cannot be dealt with by arrests of law-abiding gun owners or by unreasonable searches and seizures directed at legitimate gun collectors. It is dealt with by imposing strict and sure penalties upon those who choose to misuse firearms for criminal ends, and S. 1030 does exactly that.

Mr. Chairman, what we have here is fundamentally a conflict between two views of human nature and the proper role of Government. One view is that the Government is the giver and the repository of responsibility, and the citizen someone whom the Government properly distrusts and in many cases disciplines for his own good. This is not my view, nor was it the view of the men who organized our Nation and drafted our Bill of Rights.

The other view holds that the citizens of our Nation are responsible individuals, individuals with unalienable rights granted by the Constitution. Those who freely choose to do good or avoid harmful acts expect and deserve to be left alone. Those who freely choose to harm others ought to be treated in accordance with their own choice. This is my view, and I hope that this body agrees with me in this view, that S. 1030 is consistent with this approach to Government and the rights of citizens, and consistent with what the Founding Fathers actually had to say about our right to keep and bear arms.

I accordingly join with the administration and a majority of this House to urge its speedy enactment. I appreciate the work of the committee chairman in this instance and the efforts he is putting forth to expedite this process.

Senator GRASSLEY. Thank you very much, Senator Hatch. I do not have any questions to ask you because I agree with your position basically, and know that we are going to be discussing this during additional committee proceedings.

Senator HATCH. Thank you so much. It has been a pleasure to testify before the committee.

Senator GRASSLEY. Thank you for your fine testimony.

Senator HATCH. Thank you.

[Prepared statement of Sen. Orrin G. Hatch follows:]

TESTIMONY OF SENATOR HATCH
DECEMBER 11, 1981

"To preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them." (Richard Henry Lee, Virginia delegate to the Continental Congress, initiator of the Declaration of independence, and member of the first Senate, which passed the Bill of Rights.)

"The great object is that every man be armed. . . Everyone is able may have a gun." (Patrick Henry, in the Virginia Convention on the ratification of the Constitution.)

"The advantage of being armed. . .the Americans possess over the people of all other nations. . .Notwithstanding the military establishments in the several Kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms." (James Madison, author of the Bill of Rights, in his Federalist Paper No. 26.)

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (Second Amendment to the Constitution.)

In my studies as an attorney and as a United States Senator, I have constantly been amazed by the indifference or even hostility shown the Second Amendment by courts, legislatures, and commentators. James Madison would be startled to hear that his recognition of a right to keep and bear arms, which passed the

HOUSE BY A VOICE VOTE WITHOUT OBJECTION AND HARDLY A DEBATE, HAS SINCE BEEN CONSTRUED IN BUT A SINGLE, AND MOST AMBIGUOUS, SUPREME COURT DECISION, WHEREAS HIS PROPOSALS FOR FREEDOM OF RELIGION, WHICH HE MADE RELUNCTANTLY OUT OF FEAR THAT THEY WOULD BE REJECTED OR NARROWED BEYOND USE, AND THOSE FOR FREEDOM OF ASSEMBLY, WHICH PASSED ONLY AFTER A LENGTHY AND BITTER DEBATE, ARE THE SUBJECT OF SCORES OF DETAILED AND FAVORABLE DECISIONS. THOMAS JEFFERSON, WHO KEPT A VERITABLE ARMORY OF PISTOLS, RIFLES AND SHOTGUNS AT MONTICELLO, AND ADVISED HIS NEPHEW TO FORSAKE OTHER SPORTS IN FAVOR OF HUNTING, WOULD BE ASTOUNDED TO HEAR SUPPOSED CIVIL LIBERTARIANS CLAIM FIREARM OWNERSHIP SHOULD BE RESTRICTED. SAMUEL ADAMS, A HANDGUN OWNER WHO PRESSED FOR AN AMENDMENT STATING THAT THE "CONSTITUTION SHALL NEVER BE CONSTRUED. . .TO PREVENT THE PEOPLE OF THE UNITED STATES WHO ARE PEACEABLE CITIZENS FROM KEEPING THEIR OWN ARMS," WOULD BE SHOCKED TO HEAR THAT HIS NATIVE STATE TODAY IMPOSES A YEAR'S SENTENCE, WITHOUT PROBATION OR PAROLE, FOR CARRYING A FIREARM WITHOUT A POLICE PERMIT.

THIS IS NOT TO IMPLY THAT COURTS HAVE TOTALLY IGNORED THE IMPACT OF THE SECOND AMENDMENT IN THE BILL OF RIGHTS. NO FEWER THAN TWENTY-ONE DECISIONS BY THE COURTS OF OUR STATES HAVE RECOGNIZED AN INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS, AND A MAJORITY OF THESE HAVE NOT ONLY RECOGNIZED THE RIGHT BUT INVALIDATED LAWS OR REGULATIONS WHICH ABRIDGED IT. YET IN ALL TOO MANY INSTANCES, COURTS OR COMMENTATORS HAVE SOUGHT, FOR REASONS ONLY TANGENTIALLY RELATED TO CONSTITUTIONAL HISTORY, TO CONSTRUE THIS RIGHT OUT OF EXISTENCE. THEY ARGUE THAT THE SECOND AMENDMENT'S WORDS "RIGHT OF THE PEOPLE" MEAN "A RIGHT OF THE STATE"--APPARENTLY OVERLOOKING THE IMPACT OF THOSE SAME WORDS WHEN USED IN THE FIRST AND FOURTH AMENDMENTS. THE "RIGHT OF THE PEOPLE" TO ASSEMBLE OR TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES IS NOT CONTESTED AS AN INDIVIDUAL GUARANTEE. STILL THEY IGNORE CONSISTENCY AND CLAIM THAT THE RIGHT TO "BEAR ARMS" RELATES ONLY TO

MILITARY USES. THIS NOT ONLY VIOLATES A CONSISTENT CONSTITUTIONAL READING OF "RIGHT OF THE PEOPLE" BUT ALSO IGNORES THAT THE SECOND AMENDMENT PROTECTS A RIGHT TO "KEEP" ARMS. THESE COMMENTATORS CONTEND INSTEAD THAT THE AMENDMENT'S PREAMBLE REGARDING THE NECESSITY OF A "WELL REGULATED MILITIA. . .TO A FREE STATE" MEANS THAT THE RIGHT TO KEEP AND BEAR ARMS APPLIES ONLY TO A NATIONAL GUARD. SUCH A READING FAILS TO NOTE THAT THE FRAMERS USED THE TERM "MILITIA" TO RELATE TO EVERY CITIZEN CAPABLE OF BEARING ARMS, AND THAT CONGRESS HAS ESTABLISHED THE PRESENT NATIONAL GUARD UNDER ITS POWER TO RAISE ARMIES, EXPRESSLY STATING THAT IT WAS NOT DOING SO UNDER ITS POWER TO ORGANIZE AND ARM THE MILITIA.

I HAVE LONG REGARDED THE RIGHT OF AMERICANS TO KEEP AND BEAR ARMS AS AMONG THE MOST VITAL RIGHTS RECOGNIZED IN THE BILL OF RIGHTS. I SAY "RECOGNIZED", NOT "CREATED", BECAUSE IN MY VIEW THAT RIGHT, THE RIGHT OF FREE MEN TO BE ARMED AND TO DEFEND THEMSELVES, THEIR FAMILIES, AND THEIR FREE INSTITUTIONS, IS A GIFT OF THE CREATOR, NOT OF THE FIRST CONGRESS AS THE DECLARATION OF INDEPENDENCE CLARIFIES WITH THE WORDS "WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTIAN UNALIENABLE RIGHTS." PERHAPS I COULD TRACE BRIEFLY THE PROCESS BY WHICH THIS RIGHT WAS INCORPORATED INTO OUR CONSTITUTION.

WHEN THE FIRST CONGRESS CONVENED FOR THE PURPOSE OF DRAFTING A BILL OF RIGHTS, IT DELEGATED THE TASK TO JAMES MADISON. MADISON DID NOT WRITE UPON A BLANK TABLET. INSTEAD, HE OBTAINED A PAMPHLET LISTING THE STATE PROPOSALS FOR A BILL OF RIGHTS AND SOUGHT TO PRODUCE A BRIEFER VERSION INCORPORATING ALL THE VITAL PROPOSALS OF THESE. HIS PURPOSE WAS TO INCORPORATE, NOT DISTINGUISH BY TECHNICAL CHANGES, PROPOSALS SUCH AS THAT OF THE PENNSYLVANIA MINORITY, SAM ADAMS, OR THE NEW HAMPSHIRE DELEGATES. MADISON PROPOSED AMONG OTHER RIGHTS THAT "THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED; A WELL ARMED AND WELL REGULATED MILITIA BEING THE BEST SECURITY OF A FREE COUNTRY; BUT NO PERSON

RELIGIOUSLY SCRUPULOUS OF BEARING ARMS SHALL BE COMPELLED TO RENDER MILITARY SERVICE IN PERSON." IN THE HOUSE, THIS WAS INITIALLY MODIFIED SO THAT THE MILITIA CLAUSE CAME BEFORE THE PROPOSAL RECOGNIZING THE RIGHT. THE PROPOSALS FOR THE BILL OF RIGHTS WERE THEN TRIMMMED IN THE INTERESTS OF BREVITY. THE CONSCIENTIOUS OBJECTOR CLAUSE WAS REMOVED FOLLOWING OBJECTIONS BY ELBRIDGE GERRY, WHO COMPLAINED THAT FUTURE CONGRESSES MIGHT ABUSE THE EXEMPTION TO EXCUSE EVERYONE FROM MILITARY SERVICE.

THE PROPOSAL FINALLY PASSED THE HOUSE IN ITS PRESENT FORM: "A WELL REGULATED MILITIA, BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS, SHALL NOT BE INFRINGED.:" IN THIS FORM IT WAS SUBMITTED INTO THE SENATE, WHICH PASSED IT THE FOLLOWING DAY. THE SENATE IN THE PROCESS INDICATED ITS INTENT THAT THE RIGHT BE AN INDIVIDUAL ONE, FOR PRIVATE PURPOSES, BY REJECTING AN AMENDMENT WHICH WOULD HAVE LIMITED THE KEEPING AND BEARING OF ARMS TO BEARING "FOR THE COMMON DEFENSE".

THE EARLIEST AMERICAN CONSTITUTIONAL COMMENTATORS CONCURRED IN GIVING THIS BROAD READING TO THE AMENDMENT. WHEN ST. GEORGE TUCKER, LATER CHIEF JUSTICE OF THE VIRGINIA SUPREME COURT, IN 1803 PUBLISHED AN EDITION OF BLACKSTONE ANNOTATED TO AMERICAN LAW, HE FOLLOWED BLACKSTONE'S CITATION OF THE RIGHT OF THE SUBJECT "OF HAVING ARMS SUITABLE TO THEIR CONDITION AND DEGREE, AND SUCH AS ARE ALLOWED BY LAW" WITH A CITATION TO THE SECOND AMENDMENT, "AND THIS WITHOUT ANY QUALIFICATION AS TO THEIR CONDITION OR DEGREE, AS IS THE CASE IN THE BRITISH GOVERNMENT." WILLIAM RAWLE'S "VIEW OF THE CONSTITUTION" PUBLISHED IN PHILADELPHIA IN 1825 NOTED THAT UNDER THE SECOND AMENDMENT:

> "THE PROHIBITION IS GENERAL. NO CLAUSE IN THE CONSTITUTION COULD BY A RULE OF CONSTRUCTION BE CONCEIVED TO GIVE TO CONGRESS A POWER TO DISARM THE PEOPLE. SUCH A FLAGITIOUS ATTEMPT COULD ONLY

BE MADE UNDER SOME GENERAL PRETENSE BY A STATE LEGISLATURE. BUT IF IN BLIND PURSUIT OF INORDINATE POWER, EITHER SHOULD ATTEMPT IT, THIS AMENDMENT MAY BE APPEALED TO AS A RESTRAINT ON BOTH."

THE JEFFERSON PAPERS IN THE LIBRARY OF CONGRESS SHOW THAT BOTH TUCKER AND RAWLE WERE FRIENDS OF, AND CORRESPONDED WITH, THOMAS JEFFERSON. THEIR VIEWS ARE THOSE OF CONTEMPORARIES OF JEFFERSON, MADISON AND OTHERS, AND ARE ENTITLED TO SPECIAL WEIGHT. JOSEPH STORY IN HIS "COMMENTARIES ON THE CONSTITUTION" CONSIDERED THE RIGHT TO KEEP AND BEAR ARMS AS "THE PALLADIUM OF THE LIBERTIES OF THE REPUBLIC", WHICH DETERRED TYRANNY AND ENABLED THE CITIZENRY AT LARGE TO OVERTHROW IT SHOULD IT COME TO PASS.

SUBSEQUENT LEGISLATION IN THE SECOND CONGRESS LIKEWISE SUPPORTS THE INTERPRETATION OF THE SECOND AMENDMENT THAT CREATES AN INDIVIDUAL RIGHT. IN THE MILITIA ACT OF 1792, THE SECOND CONGRESS DEFINED "MILITIA OF THE UNITED STATES" TO INCLUDE ALMOST EVERY FREE ADULT MALE IN THE UNITED STATES. THESE PERSONS WERE OBLIGATED BY LAW TO POSSESS A FIREARM AND A MINIMUM SUPPLY OF AMMUNITION AND MILITARY EQUIPMENT. THIS STATUTE, INCIDENTALLY, REMAINED IN EFFECT INTO THE EARLY YEARS OF THE PRESENT CENTURY AS A LEGAL REQUIREMENT OF GUN OWNERSHIP FOR MOST OF THE POPULATION OF THE UNITED STATES. THERE CAN BE LITTLE DOUBT FROM THIS THAT WHEN THE CONGRESS AND THE PEOPLE SPOKE OF A "MILITIA", THEY HAD REFERENCE TO THE TRADITIONAL CONCEPT OF THE ENTIRE POPULACE CAPABLE OF BEARING ARMS, AND NOT TO ANY FORMAL GROUP SUCH AS WHAT IS TODAY CALLED THE NATIONAL GUARD. THE PURPOSE WAS TO CREATE AN ARMED CITIZENRY, THE POLITICAL THEORISTS AT THE TIME CONSIDERED ESSENTIAL TO WARD OFF TYRANNY. FROM THIS MILITIA, APPROPRIATE MEASURES MIGHT CREATE A "WELL REGULATED MILITIA" OF INDIVIDUALS TRAINED IN THEIR DUTIES AND RESPONSIBILITIES AS CITIZENS AND OWNERS OF FIREARMS.

THE RIGHTS OF INDIVIDUALS UNDER THE SECOND AMENDMENT HAVE BECOME THE FOCUS OF CONSIDERABLE CONCERN RECENTLY. ACCORDINGLY, THE SUBCOMMITTEE ON THE CONSTITUTION CONDUCTED PUBLIC HEARINGS INTO THE CONSTITUTIONAL AND CIVIL RIGHTS RAMIFICATIONS OF ENFORCEMENT OF FEDERAL FIREARMS LAWS IN SEPTEMBER OF LAST YEAR. THE

RESULTS WERE, TO SAY THE LEAST, BOTH IMPRESSIVE AND SHOCKING.

THE HEARINGS WERE CALLED TO EXAMINE WHETHER INDIVIDUAL SECOND AMENDMENT RIGHTS WERE BEING ABRIDGED WITHOUT PROOF OF CRIMINAL INTENTION ON THE PART OF INDIVIDUALS INVESTIGATED BY THE FEDERAL ENFORCEMENT AGENCY. THE SUBCOMMITTEE MADE SEVERAL INQUIRIES ABOUT POTENTIAL VIOLATIONS OF THIS CONSTITUTIONAL RIGHT. THOSE INQUIRIES TOUCHED UPON SEVERAL AREAS OF CONSTITUTIONAL CONCERN. AMONG THEM WAS THE EARLIER DISCOVERY OF A MEMORANDUM SENT TO THE DIRECTOR OF THE ENFORCING AGENCY, THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (BATF), WHICH ADMITTED THAT DUE TO RECORD-KEEPING PROBLEMS WITHIN THE BUREAU, IT MIGHT "CONVICT AN INNOCENT MAN." WHEN EXISTANCE OF THAT MEMORANDUM WAS DISCOVERED IN CIVIL LITIGATION AGAINST THE BUREAU, IT WENT SO FAR AS TO PLEAD EXECUTIVE PRIVIILEGE TO PREVENT ITS PRODUCTION. THE SUBCOMMITTEE ALSO REQUESTED A RESPONSE TO CHARGES THAT AGENTS OF THE BUREAU HAD SHOT AND SERIOUSLY INJURED A MARYLAND CITIZEN NAMED KENYON BALLEW DURING A RAID WHOSE SEARCH WARRANT WAS SECURED BY FALSE AND MISLEADING AFFIDAVITS. BATF'S RESPONSE TO THESE QUERIES WAS INSUFFICIENT, AND THE SUBCOMMITTEE ELECTED TO CONDUCT OVERSIGHT HEARINGS.

WE HEARD FROM A NUMBER OF LAW-ABIDING CITIZENS WHOSE SECOND AMENDMENT RIGHTS WERE IGNORED IN THE COURSE OF FEDERAL FIREARMS LAW ENFORCEMENT. THREE TESTIFIED IN PERSON. ALL THREE WERE FIREARMS COLLECTORS OF CLEAN RECORD AND GOOD REPUTE. ONE, BOB BEST, HAD BEEN ADVISED BY AGENTS THAT IN LIGHT OF HIS MAKING BUT A FEW SALES FROM HIS COLLECTION, HE NEED NOT SECURE A DEALER'S LICENSE. AGENTS THEN MADE A FEW PURCHASES FROM HIM, AND ARRESTED AND CHARGED HIM WITH ENGAGING IN THE BUSINESS. FORTUNATELY, CHARGES WERE DROPPED A FEW DAYS BEFORE TRIAL. ANOTHER, ROBERT WAMPLER, TESTIFIED BEFORE THE COMMITTEE EARLIER THIS WEEK. HE WAS CHARGED WITH ENGAGING IN THE BUSINESS BASED ON TWO OR THREE SALES FROM HIS COLLECTION, AND HIS ENTIRE COLLECTION--MANY OF THEM RARE AND FINELY ENGRAVED FIREARMS, MORE WORKS OF ART THAN

ANYTHING ELSE--WERE TAKEN FROM HIS HOME. NO CHARGES WERE EVER BROUGHT, BUT MR. WAMPLER WAITED THREE YEARS FOR THE RETURN OF THE COLLECTION. THE THIRD, DAVID JEWELL, HAD A COLLECTION WHICH INCLUDED A $7,000 COLLECTOR'S SHOTGUN TAKEN AND MALCIOUSLY DAMAGED. IT AND OTHER FIREARMS WERE DELIBERATELY DROPPED ON A CONCRETE FLOOR BEFORE HIS EYES.

THE SUBCOMMITTEE ALSO RECEIVED A NUMBER OF WRITTEN STATEMENTS FROM VICTIMS, ORDINARY AND HONEST CITIZENS, WHO HAD BEEN VICTIMS OF ENTRAPMENT, PROSECUTION FOR MINOR AND UNINTENTIONAL VIOLATIONS, AND UNREASONABLE SEARCHES AND SEIZURES. AT THE SAME TIME, WE RECEIVED EVIDENCE THAT SERIOUS OFFENDERS WERE BEING IGNORED BY AGENCIES CHARGED WITH ENFORCEMENT. TWO ILLINOIS JUDGES WROTE TO COMMENT THAT ENFORCING AGENCIES HAD REFUSED TO BRING CHARGES AGAINST FELONS WHO HAD BEEN APPREHENDED IN POSSESSION OF SAWED OFF SHOTGUNS. ONE OF THE WITNESSES TESTIFIED THAT HE HAD HIMSELF REFERRED A CASE TO BATF WHICH INVOLVED INTERSTATE TRANSPORTATION OF A STOLEN GUN COLLECTION, YET THE SAME AGENTS WHO SAW FIT TO RAID AND ARREST THE WITNESS WERE NOT INTERESTED IN THIS VERY REAL LAW VIOLATION.

IN SHORT, IT WAS APPARENT THAT EXISTING FEDERAL FIREARMS LAWS WERE EMPLOYED TO HARRASS HONEST FIREARM OWNERS, WHILE THE VERY REAL CRIMINAL PROBLEMS WERE LEFT LARGELY UNTOUCHED. IN LIGHT OF THIS EVIDENCE, IT IS HARDLY SURPRISING THAT A MAJORITY OF THIS COMMITTEE, AND INDEED A MAJORITY OF OUR HOUSE, HAVE CO-SPONSORED S. 1030. OUR OATH TO UPHOLD THE SECOND AMENDMENT AND OUR DUTY TO THE CITIZENS OF THIS NATION, DEMANDS NO LESS.

S. 1030'S CHANGES ARE SIMPLY GOOD LAW ENFORCEMENT. THERE IS NO REASON TO PROSECUTE, ON FEDERAL FELONY CHARGES, A CITIZEN WHO HAS NOT WILLFULLY VIOLATED THE LAW. THERE IS NO REASON TO WITHHOLD CONFISCATED FIREARMS AFTER THEIR OWNER HAS BEEN CLEARED OF ALL CHARGES. THERE IS NO REASON WHY A CITIZEN WHOSE FIREARMS HAVE BEEN ILLEGALLY SEIZED, AND WHO SECURES THEIR RETURN, SHOULD NOT BE ENTITLED TO REIMBURSEMENT FOR LEGAL EXPENSES. IF WE ARE

SERIOUS IN OUR OBJECT OF PREVENTING UNCONSTITUTIONAL AND ABUSIVE ACTS, WE MUST NOT PERMIT LEGAL STANDARDS WHICH ALLOW SUCH ACTS. CRIME CANNOT BE DEALT WITH BY ARRESTS OF LAW-ABIDING GUN OWNERS OR BY UNREASONABLE SEARCH AND SEIZURE DIRECTED AT LEGITIMATE GUN COLLECTORS. IT IS DEALT WITH BY IMPOSING STRICT AND SURE PENALTIES UPON THOSE WHO CHOOSE TO MISUSE FIREARMS FOR CRIMINAL ENDS, AND S. 1030 DOES EXACTLY THAT.

MR. CHAIRMAN, WHAT WE HAVE HERE IS FUNDAMENTALLY A CONFLICT BETWEEN TWO VIEWS OF HUMAN NATURE AND THE PROPER ROLE OF GOVERNMENT. ONE VIEW IS THAT THE GOVERNMENT IS THE GIVER AND REPOSITORY OF RESPONSIBILITY, AND THE CITIZEN SOMEONE WHOM THE GOVERNMENT PROPERLY DISTRUSTS AND, IN MANY CASES, DISCIPLINES FOR HIS OWN GOOD. THIS IS NOT MY VIEW, NOR WAS IT THE VIEW OF THE MEN WHO ORGANIZED OUR NATION AND DRAFTED ITS BILL OF RIGHTS. THE OTHER VIEW HOLDS THAT THE CITIZENS OF OUR NATION ARE RESPONSIBLE INDIVIDUALS, INDIVIDUALS WITH UNALIENABLE RIGHTS GRANTED BY THE CONSTITUTION. THOSE WHO FREELY CHOOSE TO DO GOOD, OR AVOID HARMFUL ACTS, EXPECT AND DESERVE TO BE LEFT ALONE; THOSE WHO FREELY CHOOSE TO HARM OTHERS OUGHT TO BE TREATED IN ACCORD WITH THEIR CHOICE. THIS IS MY VIEW, AND I HOPE THAT OF THIS BODY. S. 1030 IS CONSISTENT WITH THIS APPROACH TO GOVERNMENT AND THE RIGHTS OF CITIZENS. I ACCORDINGLY JOIN WITH THE ADMINISTRATION AND A MAJORITY OF THIS HOUSE TO URGE ITS SPEEDY ENACTMENT.

Senator GRASSLEY. Our next witness is the Honorable Marion Barry, Jr., Mayor of the city of Washington, D.C. Mayor Barry will be offering testimony on behalf of the U.S. Conference of Mayors. Is Mayor Barry here?

[No response.]

Senator GRASSLEY. OK. While we await Mayor Barry's arrival, I will call the third witness on the schedule, John Snyder, who represents the Citizens Committee for the Right to Keep and Bear Arms. John Snyder?

Mr. SNYDER. Thank you, Senator.

Senator GRASSLEY. What I am going to do is standard procedure for these hearings. Since we do not have the bell system hooked up, at 5 minutes I will lightly gavel you and then continue for 2 minutes to wrap up. OK?

Mr. SNYDER. Fine, thank you.

Senator GRASSLEY. Thank you.

STATEMENT OF JOHN M. SNYDER, DIRECTOR OF PUBLICATIONS AND PUBLIC AFFAIRS, CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

Mr. SNYDER. I appreciate this opportunity to testify in support of S. 1030, by Senator James A. McClure of Idaho and now nearly two-thirds of the Members of the Senate.

Since Senator McClure first came to the Senate in 1973, he has been unsurpassed in his championship of the rights of tens of millions of law-abiding American firearms owners. In fact, one of the highlights of my private career in championing these same rights came on August 2, 1976, when I presented Senator McClure with the signatures of 1,500,000 individuals on petitions endorsing his legislation to repeal outright the Gun Control Act of 1968. To the best of my knowledge, this was the largest number of signatures on a single-issue petition ever brought before the Congress of the United States.

It is most gratifying to me, then, to appear before you today in support of legislation which would eliminate some of the more onerous provisions of the Gun Control Act of 1968. Much has already been written and stated concerning the reasons for which the adoption of the provisions of S. 1030 and others is desirable as a matter of policy. In fact, the recent Reagan administration decision to eliminate the Bureau of Alcohol, Tobacco and Firearms of the U.S. Treasury Department followed severe, voluminous, and longstanding criticism of those BATF enforcement policies which served to illuminate those provisions of the Gun Control Act of 1968 which are most inimical to the interests of America's tens of millions of law-abiding firearms owners and which the salient provisions of S. 1030 would eliminate.

Mr. SNYDER. We certainly commend the Reagan administration for taking this step. We hope that the Secret Service, which we understand is being given those firearms law enforcement responsibilities heretofore carried out by BATF as well as much of the BATF personnel, will not start carrying on the same way BATF has in the past. We hope, in other words, that the much-publicized elimi-

nation of BATF will not be in fact a remanifestation of the old BATF in new Secret Service clothing.

To insure that this does not turn out to be the case, S. 1030 should be adopted. There never would have been the great BATF civil rights controversy if there had been no BATF, and there would have been no BATF if there had been no Gun Control Act of 1968. The real culprit, then, is the law itself and therefore it should be changed, if not totally repealed.

As we all know, good law rarely emanates from an atmosphere of high emotionalism and hotheadedness but rather from one of farsightedness and coolheadedness. The Gun Control Act of 1968 was enacted during a time typified by the former kind of conditions rather than the latter kind. The year 1968 was characterized by an unprecedented wave of urban riots, burning, pillaging, and assassination. As I r all, there was an urgency to do something, almost anything, to rectify the situation.

Among the "anythings" we got was the Gun Control Act of 1968. I would find it hard to believe that Congress would ever have enacted that law if it had known what was going to happen as a result of that enactment. Volumes of congressional testimony, several book-length studies, many periodical and newspaper articles, and even a film give sad witness to just what did happen as a result of that enactment.

I do not wish to belabor that already well-made point but I do wish to relay briefly to you a personal experience which summarizes for me gun control in general and the Gun Control Act of 1968 in particular. On June 8, 1971, as an assistant editor of the American Rifleman magazine, I was sent to a Silver Spring, Md., address to investigate a report that Treasury agents had shot up a victim there the previous evening.

What I saw on arrival was most appalling. It appeared to me that a bomb had gone off inside that apartment. There were several bullet holes in the walls, pictures were knocked off, and furniture and other property had been overturned.

On the previous night, that is, the night of June 7, ATF agents and local law enforcement officers, all dressed in plainclothes—"mod squad" style, if you like—battered down the door to the apartment of Kenyon Ballew, the same Kenyon Ballew mentioned by Senator Hatch in his testimony, fired at least nine shots, wounded Ballew in the head, crippled him for life, and never charged him with anything, with any violation, even though they confiscated all of his firearms.

It seems that the ATF and local officials, acting on a tip provided by a juvenile burglar and carrying a "John Doe" warrant, were so intent on enforcing the Gun Control Act that they did not even consider the possibility that Ballew—a gun collector, former Air Force policeman, and pressman for both the Washington Post and the Washington Star—could have been a law-abiding gun owner.

It has been over 10 years since that event happened, and the attorney who represented Ballew, John Bonner, has died. However, one thing Mr. Bonner gave me before he died was this X-ray of Ballew's head. This is actually a print of the X-ray but it shows where his skull has been damaged, and what appear to be black flecks in there are pieces of lead or steel from the casing over the bullet.

One thing that has not changed and that will not change is that Treasury Department lead in the head of that young man who was shot by ATF fire, had his guns taken away from him, was never charged in connection with that ATF raid, and yet remains and will remain in a Gun Control Act of 1968-caused situation of disability as long as he shall live. As this and other incidents demonstrate, the real villain is the Gun Control Act. It is a law the operation of which cries out for repeal, dismantling, or correction.

It is a law the operation of which demonstrates what the real effectiveness of gun control is. That real effectiveness is the denial of the rights of citizenship to our citizens. This is the really significant factor to consider when considering gun control laws. Gun control laws constitute a denial of rights. Conversely, acts limiting or removing gun control laws actually eliminate or limit that denial of rights. That is why we support S. 1030 and urge its adoption.

Senator, I would like to add as an appendix—because of remarks that were made by Michael Beard of the National Coalition to Ban Handguns on Wednesday in stating that police officers have not been adequately represented during these hearings—two studies which the Second Amendment Foundation has produced which deal with police attitudes toward the question of gun control in general. If I may, I would like to leave them for your perusal.

Senator GRASSLEY. They will be received. Thank you very much.

I have at least two questions I would like to ask you: For the record, how many members does your organization have?

Mr. SNYDER. We have a membership of 300,000, that is, members and supporters.

Senator GRASSLEY. Would you repeat that, please?

Mr. SNYDER. About 300,000 members and supporters.

Senator GRASSLEY. Do members of police forces join your organization? Do you have a lot of——

Mr. SNYDER. Oh, sure. Here is this booklet which illustrates that. There is this study conducted by our sister organization, the Second Amendment Foundation, on police attitudes.

Senator GRASSLEY. What is your personal or your organization's opinion about increased penalties for a person who commits a felony with a firearm?

Mr. SNYDER. The penalty should be placed on the actual use of the firearm in the commission of the felony, which is one of armed violence. In other words, the penalty should be related directly to the act of criminality in which the firearm is actually used, the act of violent criminality.

Senator GRASSLEY. OK. Now, is that the existing penalty or are you talking about increasing the penalties for that?

Mr. SNYDER. They should be made, as the McClure bill does, they should be made mandatory, so we would favor an increase.

Senator GRASSLEY. OK. Thank you very much for your testimony.

Mr. SNYDER. Thank you, Senator.

[Prepared statement of John M. Snyder follows:]

STATEMENT OF
JOHN M. SNYDER
DIRECTOR OF PUBLICATIONS AND PUBLIC AFFAIRS
CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to testify in support of S. 1030, by Senator James A. McClure of Idaho and over half the Members of the United States Senate.

Since Senator McClure first came to the Senate in 1973, he has been unsurpassed in his championship of the rights of tens of millions of law-abiding American firearms owners. In fact, one of the highlights of my private career in championing these same rights came on August 2, 1976, when I presented Senator McClure with the signatures of 1,500,000 individuals on petitions endorsing his legislation to repeal outright the Gun Control Act of 1968. To the best of my knowledge, this was the largest number of signatures on a single issue petition ever brought before the Congress of the United States.

It is most gratifying to me, then, to appear before you today in support of legislation which would eliminate some of the more onerous provisions of the Gun Control Act of 1968.

Provisions of S. 1030 which we find of particular note are those which would:

- Allow the purchase of firearms across State lines if the purchase is legal according to State law.

- Allow the transportation of firearms through any State if the use of the firearm is legal in the place travel began and the place it will end.

- Define specifically who is a gun collector or dealer.

- Permit non-licensees to sell ammunition.

- Prevent Treasury agents from inspecting a dealer's records unless there is reason to believe a violation of firearms law has occurred.

- Ban seizures of firearms without lawful arrest.

- Loosen current Federal restrictions on the sale of firearms by individuals.

Much has already been written and stated concerning the reasons for which the adoption of these provisions and others are desirable as a matter of policy.

In fact, the recent Reagan Administration decision to eliminate the Bureau of Alcohol, Tobacco and Firearms of the U. S. Treasury Department followed severe, voluminous and long standing criticism of those BATF enforcement policies which served to illuminate those provisions of the Gun Control Act which are most inimical to the interests of America's tens of millions of law-abiding firearms owners and which the salient provisions of S. 1030 would eliminate.

We certainly commend the Reagan Administration for taking this step. We hope that the Secret Service, which we understand is being given those firearms law enforcement responsibilities heretofore carried out by BATF, as well as much of the BATF personnel, will not start carrying on the same way BATF has in the past. We hope, in other words, that the much publicized elimination of BATF will not be, in fact, a re-manifestation of the old BATF in new Secret Service clothing.

To insure that this does not turn out to be the case, S. 1030 should be adopted. There never would have been the great BATF civil rights controversy if there had been no BATF and there would have been no BATF if there had been no Gun Control Act of 1968. The real culprit, then, is the law itself and, therefore, it should be changed, if not totally repealed. As Alan M. Gottlieb opines in his book, The Rights of Gun Owners, S. 1030 is absolutely essential to maintain the rights of America's gun owners. (See Alan M. Gottlieb, The Rights of Gun Owners, Aurora, Illinois, Caroline House Publishers, Inc., 1981, page 26.)

Mr. Chairman and Members of the Committee, as we all know,

good law rarely emanates from an atmosphere of high emotionalism and hot-headedness but rather from one of far-sightedness and cool-headedhess. The Gun Control Act of 1968 was enacted during a time typified by the former kind of conditions rather than the latter kind. The year 1968 was characterized by an unprecedented wave of urban riots, burning, pillaging and assassination. As I recall, there was an urgency to do something, almost anything to rectify the situation.

Among the anythings we got was the Gun Control Act of 1968. I would find it hard to believe that Congress would ever have enacted that law if it had known what was going to happen as a result of that enactment. Volumes of congressional testimony, several book length studies, many periodical and newspaper articles and even a film give sad witness to just what did happen as a result of that enactment. I do not wish to belabor that already well made point here but I do wish to relay briefly to you a personal experience which summarizes for me gun control in general and the Gun Control Act of 1968 in particular.

On June 8, 1971, as an Assistant Editor of The American Rifleman magazine, I was sent to a Silver Spring, Maryland address to investigate a report that Treasury agents had shot up a victim there the previous evening.

What I saw on arrival was most appalling. It appeared a bomb had gone off inside that apartment. There were several bullet holes in the walls, pictures were knocked off walls and furniture and other property had been overturned.

On the night of June 7, ATF agents and local law enforcement officers, all dressed in plaincolthes - "mod squad" style if you like - battered down the door to the apartment of Kenyon Ballew, fired at least nine shots, wounded Ballew in the head, crippled him for life --- and never charged him with any violation of anything even though they confiscated his firearms collection.

It seems that the ATF and local officials, acting on a "tip" provided by a juvenile burglar, and carrying a "John Doe" warrant,

were so intent on enforcing the Gun Control Act of 1968 that they didn't even consider the possibility that Ballew, a gun collector, former Air Force Policeman and pressman for both The Washington Post and The (then named) Evening Star, could have been a law-abiding gun owner.

A subsequent ATF investigation of Ballew's cartridge arms indicated that none of them had been associated with criminality.

It's been over 10 years since that incident occurred. The attorney who represented Ballew, mostly on a gratis basis, John T. Bonner, has died.

One thing that has not changed and that will not change is that Treasury Department lead in the head of that young man who was shot by ATF fire, had his guns taken away from him, was never charged in connection with that ATF raid, and yet remains and will remain in a Gun Control Act of 1968 caused situation of disability as long as he shall live.

As this incident and others demonstrate, the real villain is that Gun Control Act of 1968. It is a law the operation of which cries out for repeal, dismantling or correction.

More significantly, it is a law the operation of which demonstrates what the real effectiveness of gun control is. That real effectiveness is the denial of the rights of citizenship to our citizens. This is the really significant factor to consider when considering gun control laws. Gun control laws constitute a denial of rights.

Conversely, acts limiting or removing gun control laws actually eliminate or limit that denial of rights. That's why we support S. 1030 and urge its adoption.

Senator GRASSLEY. Has Mayor Barry arrived?

[No response.]

Senator GRASSLEY. If not, I will go on to the next witness. The next witness, accompanied by three other people, it is my understanding, is Nelson T. "Pete" Shields, chairman of Handgun Control, Inc., Washington, D.C.

Our records show that you are accompanied by James Campbell, Leslie Seeman, and Richard Goodstein. Obviously one of them is not here. Right?

Mr. SHIELDS. Yes, Mr. Chairman. Mr. Campbell was not able to make it today, so I am accompanied by Leslie Seeman and Richard Goodstein.

Senator GRASSLEY. Before you start, can I ask—and I should know but I did not inquire ahead of time—was there a television program that you and your organization were on like 6 months ago in regard to handgun control?

Mr. SHIELDS. I was on "60 Minutes."

Senator GRASSLEY. Maybe that was it.

Mr. SHIELDS. That was actually a program that was made in 1977 and was repeated after the assassination attempt on our President.

Senator GRASSLEY. I had a chance to view that, and I wanted to verify if you were the person and it was your organization that was on that program.

Mr. SHIELDS. Yes, sir.

Senator GRASSLEY. Thank you. I do not mean that in any intimidating way or anything. It is just for my own information.

Mr. SHIELDS. All right, Mr. Chairman.

Senator GRASSLEY. Would you proceed, then? I would like to also lightly tap the gavel in about 5 or 6 minutes and then have you wind up in an additional 2 or 3. Is that all right?

Mr. SHIELDS. All right. Fine.

STATEMENT OF NELSON T. "PETE" SHIELDS, CHAIRMAN, HANDGUN CONTROL, INC., ACCOMPANIED BY LESLIE SEEMAN AND RICHARD GOODSTEIN OF WILMER, CUTLER & PICKERING

Mr. SHIELDS. Mr. Chairman, as chairman of Handgun Control, today I represent the 600,000 members and supporters of our organization and the victims who started our organization.

Mr. Chairman, Handgun Control has led the fight to stop the spread of a serious cancer in our Nation—the widespread use or misuse of handguns by criminals. Since the day my son was murdered with a handgun, I have done all I could to strengthen our Federal firearms laws. This is clearly the only way to reduce the easy access by criminals to deadly, concealable handguns like the one that killed our Nick.

I am sure that Congress and certainly the public agree with that objective. I am not so sure, however, about the leaders of the National Rifle Association, for they testified before Congress a few years back that such easy access to handguns by felons is "the price we pay for freedom."

The Gun Control Act of 1968 was a compromise piece of legislation that even the National Rifle Association ultimately supported. The 90th Congress passed it overwhelmingly. Any efforts to change

it now must, if anything, be aimed at strengthening it. This is by no means a position of just advocates of handgun control. President Reagan's own task force on violent crime has recently recommended the adoption of many strengthening measures included in the Handgun Crime Control bill, S. 974, introduced by Senator Kennedy. A waiting period prior to the purchase of a handgun and stopping the importation of Saturday night special parts are two such features. The simple fact is that the extraordinary level of handgun crime in this country demands tough steps.

S. 1030 would take us in exactly the opposite direction. While its sponsors characterize it as a reform measure, our analysis shows that it would destroy this country's existing controls over interstate gun trafficking. It is critical that Congress recognize the huge disparity between the bill's stated intent and its practical implications.

It is for this reason that I asked the law firm of Wilmer, Cutler & Pickering to prepare the detailed analysis attached to my written testimony. This analysis focuses on 10 of the most serious defects in S. 1030. It demonstrates that passage of this legislation would completely undermine the 1968 Gun Control Act. Ms. Seeman and Mr. Goodstein are here with me today to answer any technical questions you may have regarding that analysis.

Let me highlight a few of the most dangerous aspects of this legislation: The sponsors of S. 1030 state that present restrictions on interstate sales are too broad and too confusing, and that their bill will "clarify" these restrictions. In fact, under S. 1030 the core provisions of the 1968 Gun Control Act would be completely eliminated.

Current law prohibits interstate sales by unlicensed individuals and channels sales through licensed dealers. This system was designed to establish some Federal control of interstate trafficking in firearms to prevent citizens from States with strict gun laws from obtaining guns in States with less stringent laws. S. 1030 would allow individuals without licenses to sell guns and they could sell them to persons from any State as long as they did not know or "have reasonable cause to believe" that the sale was illegal.

In practice, this provision would virtually repeal the current system of controlling interstate gun trafficking. An unlicensed individual could sell guns to any other individual without meeting any eligibility requirements as a seller, without knowing the differing State and local laws, without being audited, or without worrying much about the lawfulness of the transaction. Why worry, when it is so hard to prove that an unlicensed seller knew or had "reasonable cause to believe" that the sale was unlawful?

Furthermore, since unlicensed individuals would not be required to maintain records under S. 1030, more and more guns will escape the firearms tracing system, the system that in 16 minutes allowed law enforcement officers to trace the gun John Hinckley allegedly used to shoot President Reagan. This is the same system that so effectively traced the gun that killed my son. Without it, I am not sure that we would have gotten the evidence to put his killers behind bars as they are today.

If we are serious about protecting States rights to have enforceable gun laws of their own, we must continue to direct interstate

transfers through our licensed professionals. They can be held responsible for knowing their business and knowing the law. This is exactly what the 1968 Gun Control Act does and exactly what the McClure-Volkmer bill undoes.

S. 1030 also purports to protect law-abiding dealers from unreasonable search and seizures by Government agents charged with enforcing the firearm laws. However, in practice the bill would go far beyond merely controlling alleged bureaucratic abuses and would virtually eliminate the last vestiges of enforcement of our firearms laws. It would effectively prevent Government agents from making routine compliance inspections, and it would withdraw the Secretary's current authority to require licensees to submit reports containing information kept in those records.

The first effect of this provision will be the erosion of the current system of recordkeeping by Federal licensees. Let's face it, if licensees have little chance of being audited and are not required to submit reports, their records are unlikely to be up-to-date, accurate, or complete. This in turn will further deteriorate the gun tracing system.

The second effect of these recordkeeping provisions is that the firearms industry, the industry that manufactures and sells one of the country's most deadly commodities, would be a regulated industry from which the Government could obtain virtually no commercial statistics. Neither our regulators, you legislators, nor our law enforcement authorities would then know who makes, imports, or sells how many guns, either in total or by company or by type of firearm.

Another stated objective of this legislation is to strengthen the prohibitions against gun ownership by felons, addicts, mental defectives, and other prohibited persons. Despite this laudatory goal, the legislation establishes an incredibly broad relief mechanism that gives such prohibited persons an absolute right to obtain relief from their prohibitions unless the Secretary of the Treasury can affirmatively prove that they are a threat to public safety.

If the Zebra killers of my son are ultimately released from prison on parole, they would be free to apply for relief from their restrictions. Unless the Secretary could prove that they were a threat to public safety, under S. 1030 they would have an absolute right to be allowed to acquire and own as many firearms as they want. In fact, not only would this be true for the Zebra killers but also for the other 300,000 felons incarcerated in our Nation's prisons who will some day be released.

This is not reform, sir. This is pure felon relief legislation or, as this bill was originally called, gun decontrol legislation.

Mr. Chairman, now is not the time for Congress to weaken our Nation's firearms laws. The statistics on handgun crimes cry out for tough new measures, not the gutting of existing laws. I urge you to reject the proposals embodied in S. 1030 and to begin full-scale consideration of effective methods of strengthening our Nation's firearms laws.

Finally, I urge this committee to refrain from taking any action on this legislation before considering other proposals to reform and to improve the 1968 Gun Control Act. At the very least, this committee should hold hearings on the handgun crime control bill and

the recent recommendations of the Attorney General's Task Force on Violent Crime to strengthen the 1968 Gun Control Act.

Mr. Chairman, I urge this in the name of our Nick and the thousands of other sons and daughters dying on our streets each year from handguns in the wrong hands. Mr. Chairman, please care and please help.

Thank you.

Senator GRASSLEY. Would you stay? You do not have to stay at the table but I am going to recess while I go over and vote. I have 7 minutes to go cast my vote and rather than having the staff ask questions, I like to when I can. If you will just be patient, then when I am done questioning you I will call our last witness, Jack David, if Mayor Barry has not come yet.

The first question I would like to have you think about while I am gone is, what kind of gun controls were in effect when your son was killed?

[Brief recess.]

Senator GRASSLEY. Mr. Shields, I am going to ask if you would retire because Mayor Barry has arrived. He has had some problems this morning and is under a tight schedule.

It is now my pleasure to call Marion S. Barry, Jr., Mayor of the District of Columbia, on behalf of the U.S. Conference of Mayors, to testify on this very important piece of legislation.

I know, Mayor Barry, that you have come to the Capitol many times but this is my first opportunity to welcome you either as a Senator or as a Member of the House. I have not had the privilege but I have watched you many times on television and heard you speak, and it is a pleasure to meet you personally.

STATEMENT OF HON. MARION S. BARRY, JR., MAYOR OF THE DISTRICT OF COLUMBIA, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mayor BARRY. Mr. Chairman, thank you for the opportunity to appear before the committee this morning,

Just for the record, Mr. Chairman and members of the committee, I am Marion S. Barry, Jr., Mayor of the District of Columbia. I am pleased to have the opportunity to appear before you this morning as a representative of the U.S. Conference of Mayors—of which the District of Columbia is a member—the citizens of Washington, D.C., and as a victim of handgun violence myself. In 1976 I was shot when the Hanafi Muslims took over the District Building and two other facilities in Washington, D.C. Fortunately the Lord was on my side and we were not fatally injured.

My colleagues in San Francisco, Mayor George Moscone and Supervisor Harvey Milk were killed by a handgun in 1978. Just 9 months ago President Ronald Reagan was a victim of handgun violence. Local officials are not immune to handgun violence, and neither is the President of the United States. Attacks on public officials are the most visible reminders of handgun violence in this country. Handguns, however, were involved in some 11,522 deaths in 1980 in the United States. Mr. Chairman, we think this is inexcusable because handgun violence is avoidable if we have adequate laws to protect our citizens.

There are three items pertaining to handgun control which I wish to discuss with you this morning: One, the policy of the U.S. Conference of Mayors regarding handgun control; two, the efforts we have undertaken in the District of Columbia to deal with the critical problems which stem from the availability of handguns; and, three, the Federal Firearms Law Reform Act, or McClure-Volkmer bills, S. 1030/H.R. 3300, which you are currently considering.

Mr. Chairman, in 1972 in response to the growing violence in American cities, the U.S. Conference of Mayors passed a resolution calling for national legislation that would ban the manufacture, sale, importation, and private possession of handguns except for use by law enforcement personnel, the military, and sports clubs. The policy also called upon the Congress to adopt a national handgun registration law. Finally, the policy called upon the States to adopt legislation that would require the registration and licensing of all firearms.

Mr. Chairman, this policy even today represents the strongest stand against handgun violence taken by any national organization of elected officials. Almost 10 years later we, the mayors of our great cities, continue to support this position strongly. Violent crime in all of our major American cities, in our counties, has increased dramatically over the years. The major weapon used in violent crime is the handgun. Handgun control is an effective way to reduce the incidence of violent crime.

Also, Mr. Chairman, let me just say that in the last couple of months we have read of several instances where teenagers have killed each other with handguns. I think the latest incident was the 11-year-old person who killed a 9- or 10-year-old friend of his, again a classic example of the need for strong handgun control.

Mr. Chairman, turning to our own local law, we believe in setting the example for what we talk about. The Gun Control Act of 1968 provides limited but important controls over the possession and transfer of firearms. However, we felt the need in the District of Columbia for a stronger gun control law to help us deal wih violent firearm control. We therefore passed the Firearms Control Act of 1975.

Our law, the strongest of any local jurisdiction in the Nation, bans the sale of handguns in the District except to law enforcement officials, security guards, and certain military agencies. It froze the number of handguns in the District by requiring that all handguns be registered by September 24, 1976. After that date, all unregistered handguns became illegal and all applications for registration were denied.

It basically meant that those persons who would even come into the District after September 24, 1976, could not legally bring a handgun into the District and could not legally possess one. It also required the development of a public education program to inform D.C. residents of the provisions of the act, and imposed a penalty of 10 days in jail and a $300 fine for violation of the law.

Mr. Chairman, I am pleased to be able to report to you that our gun control law has had a significant positive effect on the crime rate in the District of Columbia. This has been documented in a study done by the U.S. Conference of Mayors. A comparison of the

rate of firearm-related homicide, robbery, and aggravated assault for the 3 years prior to the act with the 3 years after implementation of the act showed that the rates of these categories decreased significantly. Handgun homicides decreased 26.2 percent; assaults with handguns decreased 10.5 percent; and robberies with handguns decreased 22.5 percent.

Additionally, the death rate by firearms accidents dropped from a negligible rate of .3 per 100,000 in 1974 and 1975 to a nonexistent rate in 1978 and 1979. The suicide rate between 1976 and 1979 decreased 40 percent.

Therefore, when the effect of the law within the District of Columbia is compared with crime rates of other governmental jurisdictions, the results are similarly positive. When compared with three control groups, national, south, and all cities between 500,000 and 1 million, we found that Washington, D.C. had the greatest decrease in crime rates, in assaults, robberies, and homicides.

The District's Firearm Control Act of 1975 has clearly been proven effective in curbing violent deaths and crime due to firearm abuse. The studies show that this act, and not chance alone or other extraneous factors, has been responsible for the significant reduction in both firearm and handgun crime.

These facts are particularly impressive when you consider that the District is surrounded by two States which have relatively lax handgun control laws. If Maryland and Virginia had similiar legislation, which we certainly urge them to pass, I am confident that the results would be even better and that even fewer citizens of the District of Columbia would be victimized by handgun violence.

Also in an effort on the regional level, our Council of Governments urged the Congress and the administration to enact national legislation and adopt policies on handguns recommended by the recent Attorney General's Task Force on Violent Crime. Pending Federal legislation, the board urged the Governors, the State attorneys general, and the State Legislatures of Maryland and Virginia to support the Federal effort and to take actions within their States aimed at controlling the use of handguns. A copy of the resolution is attached for the record.

Mr. Chairman, we believe very strongly that since not every State has enacted strong gun control legislation, we must look to the Federal Government to do this. The Gun Control Act of 1968 was a good start but it needs to be strengthened, not weakened. For this reason, I have a number of serious concerns about the Federal reform act, S. 1030, which is now before you. It is my feeling and that of my fellow mayors in the U.S. Conference of Mayors that S. 1030, if enacted, would gut the Gun Control Act of 1968 and signify a major retreat in this Nation's efforts to end handgun violence.

Witnesses who have appeared before you have identified a number of provisions in the proposed legislation which would weaken the Nation's efforts to control the use of handguns. Let me reiterate just a few: The act would prohibit the Bureau of Alcohol, Tobacco, and Firearms from conducting routine inspections to determine whether licensed firearm dealers are complying with the law. BATF could only inspect premises if it "has probable cause to believe a violation . . . has occurred, and that evidence thereof

may be found on such premises," section 103[g]. This would obstruct normal agency inspection procedures.

The act would make those charged with firearm violations a preferred class of criminal defendants with procedural advantages which do not exist in any other areas of the law. Firearm violators would be immune from any subsequent civil proceedings if the Government failed to secure criminal conviction. License revocation and civil forfeiture of firearms would both be precluded. Prosecution would only be permitted if BATF could prove "a willful violation of the act." Parenthetically, Mr. Chairman, we know that legally that is a very difficult allegation to prove. Finally, alleged firearm violators would be able to obtain attorney's fees if they prevailed against the Government in any action relating to the seizure of firearms or where the Government has acted "without foundation."

The act would protect persons who employ a firearm in committing a felony but do not shoot anyone. Currently, whoever uses or carries a firearm unlawfully during the commission of a felony is subject to additional penalties—18 U.S.C. 924(c)(1976). The act would preclude application of these additional penalties for those who carry or use a firearm during the commission of a Federal felony, unless the firearm is used against the person of another.

The act would permit persons to evade their home States' firearms laws by purchasing firearms in other States. This would be a particular problem for the District of Columbia, as I discussed earlier, because we are surrounded by two States with significantly weaker gun control laws. People would be permitted to transport into or receive in the State where they reside, firearms purchased out of State unless purchases were illegal in that State or the State where the purchase occurred.

Mr. Chairman, let me just reiterate that violent crime is one of the most serious issues facing any mayor and any city today. If you take a survey, as the national surveys are done, crime ranks among the most serious perceptional and emotional problem existing in our American cities, including our own Nation's Capital.

Therefore, mayors need all the possible tools to fight violent crime successfully. Even though I have initiated a major, 13-point crime reduction, crime prevention program in the District of Columbia, the strongest in the Nation, and it is working, we still find in the area of robberies, where violent and other type crimes occur, that we need to have even stronger laws in our surrounding States to prevent criminals from being able to purchase these weapons in Maryland and Virginia and bring them into the District of Columbia.

Therefore, we have found that in the District of Columbia strong handgun controls are an essential tool as part of my 13-point crime reduction, crime prevention program. On behalf of all the mayors, I urge you oppose the Federal Firearms Law Reform Act. It can only lead to increased handgun violence in our cities.

Mr. Chairman, as one who has had to face a violent situation with a weapon, as one who has been shot, I understand how strongly some other people feel but I feel even stronger that we need to have stronger laws. Therefore, I appreciate the opportunity to

appear before you this morning. I will be happy to answer any questions you may have.

Thank you.

Senator GRASSLEY. I have three questions I want to ask you for Senator McClure, and then he has additional questions that we would like to submit and have you answer in writing.

However, before I ask you these questions, we have a letter from Mayor Ed Koch to Senator Thurmond to be placed in the record of this legislation, and I will do that at the end of your testimony.

Our first question deals with District of Columbia law. Under it, only firearms kept at a place of business may be loaded and capable of being fired. Homeowners may not have a firearm loaded and capable of being fired. Do you believe this provision should be amended, or do you believe that the defense of commercial property is more important than the defense of individual homeowners?

Mayor BARRY. I am sorry, Senator, what was the first part of the question about homeowners?

Senator GRASSLEY. It is our understanding of District of Columbia law that only firearms kept in a place of business may be loaded and capable of being fired, whereas homeowners may not have a firearm loaded and capable of being fired. That is our understanding of your law. Therefore, our question to you is, Do you believe that this provision should be amended, or do you believe that the defense of commercial property is more important than the defense of individual homeowners?

Mayor BARRY. Mr. Chairman, locally when I was on the council, even though I philosophically understand the need to have weapons that are registered unloaded so children cannot get them and use them, I am sure for all practical purposes most persons who own weapons, legally or illegally, keep them loaded.

There was a great debate in the council on businesses keeping weapons unassembled, unloaded. I was one of the main movers in moving the council away from that position because I said it seems to me that if you have a weapon in a business and the weapon is registered, that you ought to be able to use it in case robbers or others come in with weapons. It would be silly to have to go load up and assemble your weapon to use it.

Therefore, even though there is an inconsistency, for all practical purposes I do not think anyone at home keeps their weapons unloaded.

Senator GRASSLEY. Is the distinction, then, as far as you are concerned, having children around? That makes the difference?

Mayor BARRY. Well, every study has found that most fatal killings in homes are not killings of outsiders coming into the house. It is people who know each other; it is people who are relatives of each other; and it is children who mistakenly think it is a play toy and fire it. I do not have the exact data but the great majority of deaths in this Nation in one's home is someone in the home who knows the person in the home and not from an intruder.

Senator GRASSLEY. My next question is, Do you support the views of one assistant U.S. attorney who said that the District should make an example of people from other States who unintentionally bring a firearm into the District of Columbia?

Mayor BARRY. What does he mean by that? I do not know.

Senator GRASSLEY. Well, basically his statement is that through vigorous enforcement of your law, if you went after the people who were unknowing of your law and you vigorously enforced it against them to the *n*th degree, then you would be using the District of Columbia as an example with the end result, I suppose, of really bringing attention to how rigidly laws can be enforced to accomplish their ultimate goal.

Mayor BARRY. Mr. Chairman, I think that you are referring to a situation where the U.S. Attorney's Office sent out a letter warning visitors and others who would come about it. I am not familiar with that particular phase of it.

Senator GRASSLEY. OK.

Mayor BARRY. I am opposed to unilaterally finding people who have come into the District after this law has been enacted and going after them. I think the first thing you do is to say that we have a law which requires you not to bring firearms into the District of Columbia, and let them know that it is against the law and that they ought to sell those firearms or give them to someone in States where you do not have these laws. However, I would not be for prosecuting them for not knowing what it is that is going on.

Senator GRASSLEY. OK.

Mayor BARRY. Mr. Chairman, let me just say that there are a significant number, according to the data we have seen, of persons who possess firearms in their homes that are not registered. They are illegal. We have had situations where on several occasions the police have gone to homes for one reason and have found these arms and have taken necessary criminal action.

We also have a situation, Mr. Chairman, where whenever someone is arrested with a firearm in the District it is traced back to an owner. In significant instances these have come from Maryland or Virginia and a few from burglaries in the District of Columbia.

Senator GRASSLEY. The last question from Senator McClure: According to a Washington newspaper last year, some years back you owned a handgun and carried it for protection. Is that true, and when and where was that?

Mayor BARRY. Mr. Chairman, I have never owned a handgun in the sense of having bought it. There was a period in 1967–68 when I worked at an organization where we trained a number of ex-convicts and ex-addicts. Before I found out how to get it across that they should not do that, they sometimes carried weapons. On one or two occasions I might have had one that I borrowed from someone. I do not own a handgun now, have never owned one in my adult life, and do not possess one in my house and would not possess one in my house.

Senator GRASSLEY. Thank you very much, Mayor. I appreciate your testimony and, as I said before, we will have some questions we will submit to you in writing. We appreciate your getting here under the troublesome circumstances that I understand it took for you to present your testimony.

Mayor BARRY. We appreciate the opportunity, Senator, and we appreciate your allowing us to come in. We appreciate the other witnesses' tolerance of our schedule.

Senator GRASSLEY. We know you are busy. Thank you very much.

Mayor BARRY. Thank you very much.

Senator GRASSLEY. Mr. Shields, would you come back, please?

You will remember the question that I asked you when I left: What were the laws or the circumstances of the laws at the time your son was murdered?

Mr. SHIELDS. At the time he was murdered, the 1968 law, our current law, was in effect. At the time the gun that was used in his murder was bought, the 1968 law was not in effect. It was bought earlier in 1968. In fact, we were very lucky that the importer of that .32 Baretta and the store that actually sold it to its first owner kept records because at that time they were not required to.

Those records were the ones that were used to start the trace that the law enforcement agencies and the police of the State of California made. They traced that gun through 8 or 10 hands. It was originally bought by a law-abiding citizen. Then it was sold; it was stolen; it was lost; it was traded; it went through three States. It actually went out to Hawaii and back again.

If the current recommendations of the Handgun Crime Control Act, S. 974, were in effect at that time where reporting of lost or stolen handguns would be required, maybe that gun would have been picked up by the law enforcement community before it ever got down that route where it ended up in the hands of a criminal that killed our son. The history of the gun that was used in the Zebra killings is a history of uncontrolled interstate transfer, intrastate transfer and unregulated flow of guns.

I fear that if S. 1030 became law, all it would do would be to exacerbate that same problem. In fact, S. 1030 tends to create more unregulated private sale and private transfer of handguns. I would like to see less unregulated and more regulated sales. I would like to see all transfers of handguns brought under the regulated channels.

Senator GRASSLEY. I think you have answered my second question with your last statement but let me follow that up with any other types of changes in gun control laws you would like to see. Would you, for instance, desire a total ban on all private ownership of handguns?

Mr. SHIELDS. My position with respect to gun control is, No. 1, I am not for the confiscation of guns, and I am not for the banning of gun ownership. I own shotguns and rifles myself; I do not happen to own handguns. I am, however, for responsible and accountable handgun ownership.

Included in the changes in the law that I would like to see is, one, tough mandatory penalties for persons who use or carry a handgun in the commission of a crime. S. 1030 says "use" which in my mind would let the person who has a gun in their possession but does not happen to use it in a robbery, off the hook.

In addition, I would have such mandatory penalties be sequential with the penalty for the fundamental crime. S. 1030 says that they should be concurrent, so if you add a 5-year penalty for using a gun in a crime, or carrying a gun in a crime as I would do it, that penalty is concurrent with the penalty for the robbery or whatever crime it is. I would have them sequential.

Second, amplifying on my point that I made before of keeping handguns out of the wrong hands, as the Attorney General's task

force recommended, I would like to see a waiting period during which a law enforcement check can be made of the people who acquire handguns. I think society has the right to know that we are not selling a murder machine to a felon. Right now the 1968 Gun Control Act says felons are not allowed to own or acquire handguns, but there is no way for a law-abiding dealer to find out who is a felon other than taking the person's word for it.

Third, I would like to see all transfers, as I said before, brought under the control mechanism, not just the transfer and sale of new guns but the secondary transfers. Let's face it, 50 percent of the guns used in crime are acquired in secondary transfers, and those are the specific transfers that are essentially immune from law in this country. I say there is a cause-and-effect relationship; you cannot prove it but I am convinced there is. I would like to see those transfers brought under the control mechanism.

In addition, I would like to see another of the Attorney General's recommendations implemented. The Attorney General's task force recommended that we stop the importation of the parts of the so-called Saturday night specials that are used to make small guns such as the one that was used to shoot President Reagan. I concur in that, and in fact I say, if it was responsible to stop the importation of so-called Saturday night specials in 1968, it is just as responsible to stop the total domestic manufacture as well.

I noticed a question or a statement by one of your earlier witnesses about gun definition. With respect to the Cox newspaper study, it talked about the "snubbies," guns used in crime. I would define that gun that we would no longer make, the so-called snubby or the Saturday night special, by size only. Let's face it. The Cox newspaper story that you may be familiar with, Senator, determined the most frequently used criminal guns. Eight out of the top nine criminally used guns had a barrel length of 2½ inches or less. It could fit in your pocket or my pocket or Ms. Seeman's purse. I would like to see us get rid of those entirely in our society. I do not think law-abiding citizens defending their homes need that type of weapon.

Senator GRASSLEY. My last question, unless we have some that we might submit to you in writing—and it is obvious that other members of the committee are not here, and that is a right that we reserve to every member so you or any other witness might expect questions to be asked—it relates to the fact that one of your pamphlets claimed that the mandatory sentence under S. 1030 would not apply to robbery of a federally insured bank, since that is supposedly not a crime within the exclusive jurisdiction of Federal courts.

However, I have also seen what Representative Volkmer said about that, and in a reply in the Record about 18 U.S.C. 3231, where he says every Federal crime is within the exclusive jurisdiction of Federal courts. Would you comment on that?

Mr. SHIELDS. Sir, I am not a lawyer, and you are getting very deep into the legal definition of "exclusive" and what have you. I would turn it over to our lawyers here or I would answer that in writing if they do not have the appropriate information.

Senator GRASSLEY. Would you prefer to answer in writing?

Mr. SHIELDS. Yes, I would prefer to answer that in writing.

Senator GRASSLEY. OK. That is all the questions I have. I want to say that even though obviously you and I do not agree on this, let me say on the other hand that no bill is cast in concrete. I do think that you and your organization serve a responsible purpose in a democratic, free society of offering an alternative way of thought so that those of us that are on the other side of the fence must be more responsible and will be more responsible as a result of what you say and do.

Mr. SHIELDS. I thank you very much for those comments. That is our intention, Senator. Thank you.

[Prepared statements follow:]

STATEMENT OF NELSON T. "PETE" SHIELDS, CHAIRMAN OF HANDGUN CONTROL, INC., BEFORE THE SENATE JUDICIARY COMMITTEE ON DECEMBER 11, 1981.

Mr. Chairman, I am Nelson T. "Pete" Shields, Chairman of Handgun Control, Inc., a national citizens' lobby formed by victims of handgun violence with more than 600,000 supporters all over the country. Joining me today are James Campbell, Leslie Seeman, and Richard Goodstein of the Washington law firm of Wilmer, Cutler & Pickering.

Mr. Chairman, Handgun Control, Inc., has led the fight to stop the spread of a serious cancer on our nation -- the widespread use of handguns by criminals. Since the day my son was murdered with a handgun, I have done all I could to strengthen our federal firearms laws. This is clearly the only way to reduce the easy access for criminals to deadly, concealable handguns like the one that killed my Nick.

I'm sure that Congress -- and without doubt the public -- agree with that objective. But I'm not so sure about the leaders of the National Rifle Association. They testified before Congress a few years back that such easy access to handguns by felons is "the price we pay for freedom."

The Gun Control Act of 1968 was a compromise piece of legislation that even the NRA ultimately supported. The 90th Congress passed it overwhelmingly. Any efforts to change it now must, if anything, be aimed at strengthening it. And this is by no means a position limited to advocates of handgun control. President Reagan's own Task Force on Violent Crime has recently recommended the adoption of many measures included in the Handgun Crime Control Bill (S. 974), introduced by Senator Kennedy. A waiting period prior to purchases and banning the importation of Saturday Night Special parts are two such features. The simple fact is that the extraordinary level of handgun crime demands tough steps.

S. 1030 would take us in exactly the opposite direction. While its sponsors characterize it as a "reform" measure, our analysis shows that it would destroy this country's existing controls over

interstate gun trafficking. It is critical that Congress recognize the huge disparity between the bill's stated intent and its practical implications.

It is for this reason that I asked the law firm of Wilmer, Cutler & Pickering to prepare the detailed analysis attached to my written testimony. This analysis focuses on ten of the most serious defects in S. 1030. It demonstrates that passage of this legislation would completely undermine the 1968 Gun Control Act. Mr. Campbell and Ms. Seeman are here to answer any technical questions regarding this analysis.

But let me highlight a few of the most unfortunate effects of this legislation.

The sponsors of S. 1030 state that present restrictions on interstate sales are too broad and confusing and that their bill will "clarify" these restrictions. In fact, under S. 1030 the core provision of the 1968 Gun Control Act would be completely eliminated.

Current law prohibits interstate sales by unlicensed individuals and channels sales through licensed dealers. This system was designed to establish some federal control of interstate trafficking in firearms and to prevent citizens from states with strict gun laws from obtaining guns in states with less stringent laws. S. 1030 would allow individuals without licenses to sell guns, and they could sell them to persons from any state as long as they did not know or have "reasonable cause to believe" that the sale was illegal.

In practice this provision would virtually repeal the current system of controlling interstate gun trafficking. An unlicensed individual could sell guns to any other individual without meeting any eligibility requirements as a seller, without knowing the differing state and local laws, without being audited, or without worrying much about the lawfulness of the transaction. Why worry -- when it is so hard to prove that the unlicensed seller knew or had "reasonable cause to believe" that the sale was unlawful?

Furthermore, since unlicensed individuals would not be required to maintain records under S. 1030, more and more guns will escape

the firearms tracing system -- the system that in sixteen minutes allowed law enforcement officials to trace the handgun John Hinckley allegedly used to shoot President Reagan. This is the same system that so effectively traced the gun that killed my son. Without it, I am not sure that we could have gotten the evidence to put his killers behind bars.

If we are serious about protecting states' rights to have enforceable gun laws of their own, we must continue to direct interstate transfers through our licensed professionals. They can be held responsible for knowing their business and knowing the law. That is exactly what the 1968 Gun Control Act does, and exactly what McClure-Volkmer undoes!

S. 1030 also purports to protect law-abiding dealers from unreasonable searches and seizures by government agents charged with enforcing the firearms laws. But in practice, the bill would go far beyond merely controlling alleged bureaucratic abuses, and would virtually eliminate the last vestiges of enforcement of our firearms laws. It would effectively prevent government agents from making routine compliance inspections. And it would withdraw the Secretary's current authority to require licensees to submit reports containing information kept in their records.

The first effect of these provisions will be the erosion of the current system of recordkeeping by federal licensees. Let's face it, if licensees have little chance of being audited and are not required to submit reports, their records are unlikely to be up-to-date, accurate, or complete. This in turn will further deteriorate the gun tracing system.

The second effect of these recordkeeping provisions is that the firearms industry, the industry that manufactures and sells one of the country's most deadly commodities, would be a regulated industry for which the government could obtain virtually no commercial statistics. Neither our regulators, our legislators, nor our law enforcement authorities would then know who makes, imports or sells how many guns, either in total, or by company, or by type of firearm.

Another stated objective of this legislation is to strengthen the prohibitions against gun ownership by felons, addicts, mental defectives, and other prohibited persons. Despite this laudatory goal, the legislation establishes an incredibly broad relief mechanism that gives such prohibited persons an absolute right to obtain relief from their prohibitions unless the Secretary of the Treasury can affirmatively prove that they are a threat to public safety.

If the Zebra killers of my son are ultimately released from prison on parole, they would be free to apply for relief from their restrictions. Unless the Secretary could prove that they were a threat to public safety, they would have an absolute right to be allowed to acquire and own as many firearms as they please.

This is no "reform". It is pure felon relief legislation, or as this bill was originally called, "Gun Decontrol" legislation.

Mr. Chairman, now is not the time for Congress to weaken our nation's firearms laws. The statistics on handgun crimes cry out for tough, new measures, not the gutting of our existing laws. I urge you to reject the proposals embodied in S. 1030 and to begin full-scale consideration of effective methods to strengthen our firearms laws.

Finally, I urge this committee to refrain from taking any action on this legislation before considering the other proposals to reform and improve the 1968 Gun Control Act. At the very least, this committee should hold hearings on the Handgun Crime Control Bill (S. 974) and the recent recommendations of the Attorney Ceneral's Task Force on Violent Crime to strengthen the 1968 Gun Control Act.

TESTIMONY OF WILMER, CUTLER & PICKERING ON S. 1030,
BEFORE THE
SENATE JUDICIARY COMMITTEE, ON BEHALF OF HANDGUN CONTROL,
INC., BY JAMES S. CAMPBELL AND LESLIE C. SEEMAN, WITH
RICHARD F. GOODSTEIN

We appreciate the opportunity to testify today for Handgun Control, Inc. on S. 1030, the McClure-Volkmer bill. This legislation has been characterized by its proponents as a modest reform of federal firearms laws to remove inequities and inconsistencies and to protect firearms owners against violations of their civil liberties. In reality, however, the actual effect of the McClure-Volkmer bill will be virtually to repeal the current system of federal controls over illegal gun trafficking.

S. 1030 is a complex and technical bill that would make extensive changes in Chapter 44 of Title 18, which is itself a complex and technical code of law containing many of the most important federal laws relating to firearms and ammunition. Our testimony today will indicate some of the major respects in which the actual legal effect of S. 1030 would depart both from the expressed intent of its sponsors and from what informed members of Congress would likely agree upon as appropriate changes in existing federal firearms laws.

SUMMARY

For the past thirteen years the centerpiece of the federal firearms laws has been a general ban on interstate commerce in firearms by private citizens -- persons other than federally licensed manufacturers, importers, dealers and collectors. This prohibition was adopted in the Gun Control Act of 1968 as a response to the growing problem of interstate trafficking in firearms. The opportunity for individuals to buy guns out of state had allowed them to circumvent their state and local gun laws and thus had frustrated state and local efforts to control the ownership, transfer, and use of guns.

Moreover, by channeling interstate transfers through federal licensees, the 1968 Act sought to establish a minimum level of regulatory supervision over the interstate sales that were allowed. Unlike private citizens, the federal licensees must meet standards of competence and responsibility before they can trade in firearms, are required to keep records of their activities, and are subject to continuing federal monitoring and control.

The current federal firearms control system was the product of five years of Congressional hearings and Executive Branch initiatives, catalyzed by the assassinations of President John F. Kennedy, Dr. Martin Luther King and Senator Robert F. Kennedy. Like most legislation, the 1968 Act was a compromise -- between those who desired a more extensive federal system of firearms owner registration or licensing and those who preferred no further federal controls (or, at most, mandatory prison sentences for gun crimes). Under the 1968 compromise, state and local firearms control efforts were aided by restricting interstate gun purchases to licensed dealers and by requiring that all intrastate gun purchases from dealers by private citizens be recorded by the dealer. But private citizens could continue to make sales and purchases of guns to and from each other (so-called "secondary transfers") wholly outside of any recordkeeping or other federal regulatory requirement. And, so long as unlicensed private citizens confined themselves to intermittent gun transactions with residents of the same state, they would be unlikely to violate any federal law.

The McClure-Volkmer bill would dismantle the existing federal firearms control system by removing the present broad prohibition against interstate gun transactions involving unlicensed private citizens. This change in federal law would

legalize a new substratum of interstate gun traffic subject to no effective governmental controls. Transactions in violation of state and local firearms control laws would increase, even though the bill of course authorizes private citizens only to engage in lawful (or apparently lawful) transactions. Individuals could evade state and local requirements by crossing state lines to buy their firearms. There, under the McClure-Volkmer regime, they would be far more likley to find cooperative sellers, since non-licensed individuals are not screened, are less familiar with federal, state and local requirements, and are less likely to know, or have an incentive to learn, whether the sale complies with such requirements. Furthermore, since non-licensed individuals are not required to maintain records, and there is no means for monitoring transactions between them, it would obviously be difficult, if not impossible, for law enforcement authorities to detect such illegal sales in any systematic manner.

The adverse effects of the new McClure-Volkmer system would extend beyond an increase in unlawful transfers. Even an increase in lawful transfers between unlicensed persons will necessarily involve an increase in transactions for which no records are kept, thus eroding the ability of law enforcement authorities to trace guns used in crimes.

The McClure-Volkmer bill contains other provisions that would also have the effect of reducing federal controls on illegal trafficking in firearms. For example, the bill would prevent the Treasury Department from employing one of its most effective enforcement tools -- the routine inspections necessary to determine whether federal licensees are complying with the law. In addition, the bill stands on its head the procedure by which persons prohibited from firearm ownership (e.g., convicted felons, mental patients, drug users) may

obtain relief from such restrictions. It would have the effect of giving such persons an absolute right to obtain relief from the prohibition unless the Secretary of the Treasury could affirmatively prove that they were a threat to public safety.

In our testimony this morning, we discuss ten important legal defects in the McClure-Volkmer bill. There are many others. Moreover, the likely adverse effects of any one provision are compounded by the combined effect of the provisions taken as a whole. Thus, for example, the effect of the provisions that weaken existing law governing firearms transfers is compounded by the provisions restricting the ability of the Treasury Department to enforce the remaining standards. Similarly, the effect of the bill's provisions making it easier for criminals to obtain relief from firearms ownership restrictions is magnified by the provisions that increase the likelihood that even those remaining in the prohibited category will have less difficulty obtaining access to firearms. One cannot, in the end, avoid the conclusion that the McClure-Volkmer bill is an example of legislation in which the whole is worse even than the sum of its parts.

1. Interstate Trafficking by Unlicensed Individuals

The centerpiece of the current federal system to control illicit trafficking in firearms is the general prohibition against out-of-state firearms purchases by, or sales to, individuals other than federally licensed manufacturers, importers, dealers and collectors. Only federal licensees are permitted to transport firearms in interstate commerce. 18 U.S.C. §§ 922(a)(1)-(2). Individuals may not receive or transport into their home state firearms purchased in another state, 18 U.S.C. § 922(a)(3), nor may an individual or a federal licensee sell to an individual from another state. 18 U.S.C. §§ 922(a)(5), (b)(3). These prohibitions, which are

subject only to certain narrow exceptions, seek to ensure that interstate transfers are channeled through federal licensees.

The bill, assertedly in furtherance of the goal of administrative simplicity, would dismantle this system. It would permit any person meeting minimum federal eligibility standards to purchase a firearm in any state, subject to the requirement that the person could not receive or transport the firearm into his home state if the purchase would violate the state or local law at his place of residence or the place of purchase. § 102(c). Further, it would permit any person to transfer a firearm to a federally eligible person from any other state as long as the transferor did not know or have reasonable cause to believe it would violate the transferee's state or local law or the law at the place of purchase. §§ 102(d)-(e). Under the proposed system, therefore, unlicensed individuals would be free to conduct interstate transactions.

The comparative advantages of the present licensee-focused system are many fold. It more readily permits federal monitoring of illegal transactions -- because dealers are required to maintain records of gun transfers. Moreover, such recordkeeping facilitates the tracing system now in effect, which enabled law enforcement authorities to trace, within minutes, the handgun used to shoot President Reagan. Since dealers must undergo a federal eligibility check before they are licensed, are subject to continuing federal oversight, and are more familiar with applicable laws and procedures, a system that relies on dealers for interstate transfers also helps to reduce the ultimate number of illegal sales.

Allowing non-licensed individuals to participate in interstate sales would reduce all of these benefits. Such a provision would undermine the ability of law enforcement authorities to investigate suspicious transfers (e.g., large

numbers of guns or repeated sales to a single source), or to trace guns used in crimes, because interstate transfers between non-licensees would not be subject to recordkeeping requirements of the kind imposed on licensees. Furthermore, the number of illegal sales is likely to rise because non-licensed individuals are not screened, have no reason to be familiar with applicable transfer requirements, and are not monitored by any governmental regulatory authority.

Even if the purpose of the federal transfer requirements were, as its sponsors suggest, simply to ensure that persons were prohibited from circumventing their state laws by making out-of-state purchases (and not also to serve a valid federal interest in controlling illegal interstate gun traffic), the proposed provisions would not serve that goal. The bill would substitute for existing law a system that is essentially unworkable. It is obviously unrealistic to expect transferors in, for example, California, particularly non-licensed individuals without comprehensive knowledge of state and local gun control laws, to know whether a transfer to a Delaware resident violates state and local law in Delaware. Furthermore, they are under no obligation to ascertain whether the transfer is permitted under Delaware law. As long as they do not "know[ ] or [have] reasonable cause to believe" the transfer is improper, they are free to sell.[1/] As a practical matter, individuals would frequently not know that a transaction was barred by some distant state's law, thereby subverting the bill's stated purpose of having the lawfulness of interstate firearms transfers determined principally by state law.

Thus, it is not enough for the proponents of S. 1030 to argue that the prohibition can be effectively enforced because licensed dealers are provided an annual compilation of state and local gun laws. (As it now stands, it is not even

clear that the legislation requires dealers to check their book to determine whether the transfer is legal.[2/] At the very least, dealers should be held strictly liable for unlawful sales, so they would be required to refer to the resources the government has provided.) The critical problem, of course, and the one that the sponsors fail to address, is that making a list of state and local requirements available to dealers does nothing to ensure that the enormous group of non-licensees who would be permitted to sell out-of-state will have any practical way (or incentive) to determine compliance with applicable laws.

Thus, the bill as drafted is unlikely to achieve the purpose its sponsors have stated it was intended to achieve: to outlaw any transfer in violation of the state or local law at the place of purchase or at the transferee's residence. See Remarks of Congressman Volkmer, 127 Cong. Rec. E2037 (May 1, 1981); 127 Cong. Rec. E4273 (September 17, 1981). Even if a transfer violated applicable law, it would not necessarily be illegal because the transferor could escape liability if he did not know or have reasonable cause to believe the transfer was unlawful.[3/]

Finally, a system that allowed nationwide purchases by individuals from other individuals would also inhibit effective enforcement of federal firearms eligibility standards. To be sure, section 102(f) of the bill prohibits all persons, licensees and non-licensees, from selling to someone they know or have reasonable cause to believe does not meet the minimum federal eligibility requirements (i.e., a person convicted of a felony, an illegal alien, etc.). It is difficult, however, to see how non-licensed individual sellers can be expected to know what these eligibility requirements are or whether a given purchaser meets them. Therefore, any change

in the law that increases the sales that individuals can lawfully make -- as McClure-Volkmer does by legalizing interstate sales by individuals -- will increase the likelihood of sales being made to prohibited persons.

It is no answer to this objection to say that current law does not prohibit intrastate sales by individuals to residents failing to meet minimum federal eligibility requirements. See Remarks of Congressman Volkmer, 127 Cong. Rec. E4273 (September 17, 1981). That is true -- but the remedy for this loophole is obviously to try to close it, not to broaden it by legalizing interstate sales by individuals to non-residents. Any change in the law that increases the number of gun transactions by persons who could not be expected to know what the minimum federal eligibility requirements are, or whether their purchaser meets them, will simply reduce the effectiveness of those requirements.

2. Lawful Purposes Loan Exception

As shown above, the bill permits a non-licensed person to provide a firearm to another person, subject to the requirement that the transferor does not know or have reasonable grounds to believe that the transferee would violate a law in his home state by acquiring the gun. The bill creates an exception to this requirement, however, for the loan or rental of a firearm for temporary use for "lawful purposes." § 102(d).

The new "lawful purposes" loan exception bears a superficial resemblance to the "lawful sporting purposes" loan exception of existing law. Under existing law, one exception to the prohibition on out-of-state transfers of firearms to non-licensees is that a gun may be loaned or rented for "lawful sporting purposes." 18 U.S.C. §§ 922(a)(5)(B), (b)(3)(B).

This limited exception applies to permit a sportsman to make temporary use of a gun in another state, a type of "transfer" that does not interfere with the purposes of the general prohibition against the interstate transfer of firearms to unlicensed persons.

The new exception for out-of-state loans for lawful purposes, however, has no rational function in the proposed system where only out-of-state transfers illegal under the law of the state of the transferor or transferee are prohibited. Under such a system the exception only applies to transfers that are otherwise illegal under state law. One obvious question is whether any such transfer prohibited by state law would be for a "lawful purpose" and therefore come under the exception. Indeed, Congressman Volkmer has stated that it is his intent that any loan or rental in violation of the law at the place of transfer would not be permitted, because it would not be for a "lawful purpose." See Remarks of Congressman Volkmer, 127 Cong. Rec. E4273 (September 17, 1981). Under that interpretation, the exception is, in effect, a nullity -- an illegal transfer would not satisfy the "lawful purpose" aspect of the exception.

If the provision is to have any operative effect (and the normal presumption in statutory interpretation is that statutory provisions are intended to be more than a nullity), the reading of the provision would have to be that certain lawful purposes justify the transfer, despite the violation of applicable laws. Thus, the apparent implication of the exception would be that a Maryland resident could loan or rent a gun to a New York resident even if the transferor knew the transfer was prohibited by either New York or Maryland law (for example, by a permit requirement) as long as it was intended to be a temporary loan for a "lawful purpose" (for example, self-

defense). But if someone is properly prohibited by state or local law from receiving a gun, there should not be a broad exception in federal law to permit such receipt, even as a temporary loan, as Congressman Volkmer himself apparently recognizes. Id.

3. Definition of "Engaged in the Business"

Current law makes it unlawful for anyone except a licensed dealer to engage in the business of dealing in firearms or ammunition. 18 U.S.C. §§ 922(a)(1), 923(a).[4/] The term "dealer" is defined, inter alia, as any person engaged in the business of selling firearms or ammunition at wholesale or retail. See 18 U.S.C. § 921(a)(11)(A); 27 C.F.R. § 178.11. The term "engaged in the business" is not defined in the statute or in the regulations.

Section 101(e) of the bill establishes the definition of the term "engaged in the business" as it applies to dealers as well as the other types of firearms licensees. For a dealer who is either a wholesale or retail seller or a pawnbroker, it requires that the person devote "time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms." Although pawnbrokers are known to be among the leading sellers of guns used in crimes, pawnbrokers could seek to evade federal licensing and recordkeeping requirements under this definition, on the grounds that their sporadic sales of firearms do not constitute a "regular course of trade or business" or the "repetitive purchase and resale of firearms." Similarly, the "regular course of business" requirement might exclude from federal licensing control businesses that operate on a part-time basis, although they conduct a substantial number of

sales, and new businesses not yet engaged in the regular course of business but fully intending to do so.

The definition of "engaged in the business" for importers contains a fairly substantial loophole -- the requirement that the importer be a person "other than a dealer." § 101(e). A person who imported as well as dealt in firearms would not under this definition be subject to the regulatory requirements applicable to importers.

4. Compliance Inspections

If amended as proposed, the Act would lose one of its most effective enforcement mechanisms -- compliance inspections. Section 103(f) of the proposed bill would amend section 923(g) of the Act to provide for inspections of a licensee's records only if Treasury has probable cause to believe that a violation of the Gun Control Act has occurred and that evidence of such a violation might be found on the licensee's premises. Such a provision would effectively eliminate on-premises compliance inspections because it would be very difficult for inspectors to develop the requisite probable cause without actually seeing the records in question.

The proponents of this legislation argue that the bill merely extends to licensees the same protections given other citizens under the Fourth Amendment. They argue that this provision is merely an effort to put firearms inspections in accord with certain language in the Supreme Court's decision in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), limiting the inspection powers of the Occupational Safety and Health Administration. Even a cursory reading of Barlow's, however, reveals that the Supreme Court specifically recognized the legitimacy of warrantless inspections of firearms dealers. In contrast to other industries where stricter Fourth Amendment

protections apply, the firearms industry has long been subject to close government supervision and inspection. Thus, the Court said, "when an entrepreneur embarks on such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation" and "'in effect consents to the restrictions placed upon him.'" 436 U.S. at 313, quoting Almeida-Sanchez v. United States, 413 U.S. 266, 271 (1973). Indeed, in United States v. Biswell, 406 U.S. 311 (1972), the Court upheld the constitutionality of a warrantless inspection of a federal firearms licensee, recognizing that "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." Id. at 316. Thus, there is no legal justification that mandates the proposed change in existing law.

Furthermore, there are strong policy arguments against this proposed section of the bill. Tough restrictions on inspections would have the effect of destroying the current system whereby the licensee recordkeeping requirement serves as an integral part of government law enforcement and firearms tracing activities. The need to have access to records kept by federal licensees does not stem solely from a governmental interest in determining whether such licensees have themselves violated the law. Perhaps even more important is the fact that such records can be used to investigate criminal activity by others and to trace the source of guns used in crimes. In many instances the relevant criminal activity involves violations of criminal provisions other than Chapter 44 (federal firearms laws). Yet under the bill, unless the law enforcement authorities could establish probable cause that a violation of Chapter 44 had occurred, they would be precluded from obtaining access to the records. The sponsors offer no sound justification for curtailing the use of firearms records in this manner.

Section 103(f) of the bill would also eliminate the current requirement in section 923(g) that licensees submit to Treasury certain reports concerning information contained in the records they are required to maintain. Now, for instance, dealers must report on multiple sales, 27 C.F.R. § 178.126a, and manufacturers must submit certain production data. 27 C.F.R. § 178.126. This type of information is critical for law enforcement efforts to identify and investigate illegal gun trafficking, and for government efforts to monitor the size and nature of firearms production in the United States. Under the proposed bill, Treasury would be precluded from obtaining this valuable information.

5. Dealer's Personal Collection

A potentially significant loophole in the Act's recordkeeping requirements emerges from the bill's proposed exception from these requirements for a licensed dealer's "personal collection." § 103(c). A licensed dealer must now maintain business records, as prescribed by regulation, which contain specified information concerning the acquisition and disposition of his firearms. 18 U.S.C. § 923(g). The proposed exemption from the recordkeeping requirements for a dealer's "personal collection not part of business inventory" could greatly undermine law enforcement efforts to monitor compliance with the Act. The legislation does not define either "personal collection" or "business inventory" and does not require a dealer to identify which part of his stock of guns he considers to be in each category. As a result, a dealer could seek to evade federal recordkeeping requirements by deeming part of his stock "personal," or could avoid penalties for failure to comply with recordkeeping requirements by declaring any firearms for which records were not kept to be part of his "personal collection." The lack of records for an undefined

portion of the firearms in a dealer's possession could also seriously undermine the ability of law enforcement authorities to trace guns used in crimes.

6. Licensing of Persons Convicted of Violations Other Than Those Charged

Section 103(e) of the bill proposes that if a licensee is charged criminally for violations of the Act or its regulations but not convicted of such charges, the Secretary cannot deny or revoke the license based on the facts that formed the basis for the criminal charges. (Similarly, section 104(c) of the bill requires the return of confiscated weapons if the disposition of the criminal charge upon which the seizure was based is a finding "other than 'guilty'.") Congressman Volkmer has stated that the intent of these provisions is to prevent the imposition of sanctions when a citizen is "vindicat[ed]" of criminal charges. See Remarks of Congressman Volkmer, 127 Cong. Rec. E2037 (May 1, 1981). In fact, these provisions would leave firearms in the possession of admitted criminals, for they fail to account for a central element of our criminal justice system -- plea bargaining.

For example, assume that a licensee has been convicted for tax evasion involving illegal shipments of firearms. This licensee could have been charged initially with various crimes, including violations of the Gun Control Act, in connection with the illegal shipments. In the course of plea negotiations, the Gun Control Act violations might have been dropped, even though the predicate for the licensee's ultimate plea would clearly have involved conduct that violated the Act. Under the proposal, this conduct could not be a basis for revoking the license, even though all parties concerned recognized it had occurred.

Furthermore, proposed section 103(e) is contrary to the settled rule of law that even a criminal acquittal does not bar a later civil proceeding based on the same acts. See, e.g., One Lot Emerald Cut Stones and One Ring v. United States, 409 U.S. 232, 235 (1972); Stone v. United States, 167 U.S. 178, 188 (1897). The burden of proof in a criminal proceeding is far higher than that in an administrative action. As a result, the failure to obtain a criminal conviction for firearms law violations should not foreclose a legitimate civil case from being brought to revoke the defendant's license to deal in firearms.

7. "Willful" Violations

Current law provides that violations of the Act are the basis for both specific criminal penalties and the possible seizure and forfeiture of weapons. 18 U.S.C. §§ 924(a), (d). Moreover, a license may be revoked if the holder has violated the Act or its regulations. 18 U.S.C. § 923(e). The bill would amend all these provisions to require "willful" violations. §§ 103(d), 104(a), (c). The bill's proponents contend that a willfulness requirement is needed to focus enforcement efforts on criminal violators, rather than "innocent" citizens.

Whatever the merits of this claim with respect to the criminal sanctions available under section 924(a), it is clearly without merit as applied to the Secretary's power to revoke licenses under section 923(e). Surely, negligent or accidental violations by dealers could furnish appropriate grounds for loss of their licenses to engage in retailing a commodity as dangerous as firearms. Competence, as well as "innocence," should certainly be a requirement for entering into the business of firearms manufacturing or selling.

8. Rulemaking Delay

Sections 106(e) and (f) of the bill alter the administrative provisions applicable to Treasury's rulemaking authority. Current law already requires "reasonable public notice" prior to the promulgation of any rules and regulations dealing with firearms. 18 U.S.C. § 926. Section 106(e) of the bill imposes a minimum 90-day public notice period. Section 106(f) establishes a legislative veto procedure which apparently imposes an additional 90-day waiting period after any rule dealing with firearms is promulgated. These proposals would hamper Treasury's effectiveness by requiring at least a half-year delay in the effective date of every rule or regulation it issues, no matter how minor, routine, and unrelated to Congress' principal policymaking responsibility.

9. Through Transportation of Firearms

Another provision of the proposed legislation that could give rise to illegal gun traffic is the suggested change to 18 U.S.C. § 927. This section now provides that Congress does not intend to preempt state firearms law unless the particular state and federal provisions directly conflict and cannot be reconciled. Section 107 of the bill, however, specifically preempts any state law prohibiting the transfer through that state of an unloaded, "not readily accessible" gun.

Such a provision would restrict the rights of states to regulate firearms traffic within their borders. For example, a state that wished to adopt some type of screening mechanism to ensure the eligibility of persons entitled to carry guns on its highways might adopt a "license to carry" requirement. Unless the state law had an exception for non-residents -- a large number of whom might also be ineligible

under the state's standards -- the state law would be preempted.

Furthermore, as currently phrased, the extent of federal preemption is vague and uncertain. For example, it is unclear what is meant by transportation "through" the state. Would the driver of a truckload of unloaded, inaccessible guns with an ultimate destination outside of the state be subject to state controls if he spent the night at a roadside motel in the state? if he made a detour for a delivery? if he stopped for the weekend to visit friends? if he stayed for a week? Similarly, what is meant by "not readily accessible"? Is it enough to keep the guns locked in a box in the driver's compartment? must they be locked in the trunk? must they be locked in a box in the trunk?

10. Firearms Trafficking by Convicted Felons and Other Unsuitable Persons

Section 105(a) of the bill changes the procedures whereby convicted felons[5/] can obtain relief from firearms ownership and trafficking restrictions. The bill would substantially expand the opportunity for convicted felons to avoid federal prohibitions and would significantly limit the discretion of the Secretary in determining whether such relief is appropriate. Moreover, it would open the opportunity for other probably unsuitable persons (e.g., mental patients, firearms criminals, drug addicts) to become dealers licensed to traffic in handguns and other firearms.

Section 105 of the bill expands the category of persons eligible to apply for relief from prohibitions on receipt of firearms (and hence for licenses, cf. 18 U.S.C. § 923(d)(1)(B)) to include individuals convicted of crimes involving firearms and the other prohibited persons such as fugitives from justice, illegal aliens, drug users, persons

dishonorably discharged, and mental patients. It then alters and reverses the burden of proof applicable to the Secretary's decision on whether to remove the prohibition (and hence, ultimately, on both the decision whether to revoke a license, 18 U.S.C. § 923(e), or to grant one in the first instance, 18 U.S.C. § 923(d)(1)(B)). Rather than (1) requiring the applicant to show that he will not likely act in a manner dangerous to public safety, and (2) allowing the Secretary to decide whether relief is appropriate in the public interest, the bill provides that the Secretary shall grant relief unless the applicant's record and reputation are such that he will be likely to act in a manner dangerous to public safety.

Under current law, the burden of proof on an application for relief from disabilities is on the party with the greater access to relevant facts; a person convicted of a felony fifteen years ago or one who spent time in a mental institution is in the best position to marshal evidence concerning his more recent behavior and position in the community necessary to convince the Secretary that the prohibitions need no longer apply. Under the proposed bill, the burden of proof is on the party with the least access to relevant evidence. A convicted felon or mental patient need only apply for lifting of the restrictions; then the Secretary must conduct an investigation and develop a case showing that the applicant is still likely to act in a manner dangerous to public safety. As a practical matter, it will be extremely difficult and burdensome for the Secretary to discover and come forward with such evidence, particularly since a large number of applications are likely to be submitted pursuant to this provision. The way is thus opened for significant numbers of unsuitable persons to become or remain eligible for federal licenses and thus to engage lawfully in the business of manufacturing and distributing handguns and other firearms.

In addition, the bill provides for complete de novo judicial review of any denial of relief by the Secretary. Such broad review is inconsistent with established administrative procedure, and because it would be duplicative of the proceedings before the Secretary, would unnecessarily burden the courts.

1/ Indeed, a major inconsistency in the bill is created by the addition of new section 102(d) in conjunction with the retention of old section 922(b)(2). Under the latter, a licensee is not permitted to sell in violation of the state or local law at the place of transfer unless he knows or has reason to believe the sale is lawful. Section 102(d) undercuts this affirmative obligation to ensure compliance, however, by permitting the licensee (like any other person) to sell unless he has reason to believe the sale is unlawful.

2/ Although the Secretary could, presumably, provide such a requirement by regulation, sections 106(e)-(f) of the bill would impose substantial procedural hurdles and delays before such regulation could be adopted.

3/ In further defense of his proposed revision, Congressman Volkmer criticizes the validity of the current ban on interstate sales to non-licensees by arguing that the provision was hastily adopted "very late in the history of the 1968 law." See Remarks of Congressman Volkmer, 127 Cong. Rec. E4273 (September 17, 1981). In fact, the prohibition was given much more thorough consideration than this statement implies. The concept was contained in S. 1592, the Johnson administration bill introduced in March 1965; was part of that administration's proposed legislation introduced in early 1967 (see H.R. 5384, S. 1 Amendment No. 90), well over a year before the bill was passed; was addressed in House and Senate hearings in 1967 (see Federal Firearms Act: Hearings on S. 1, Amendment 90 to S. 1, S. 1853, and S. 1584 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. (1967); Anti-Crime Program: Hearings on H.R. 5037, H.R. 5038, H.R. 5384, H.R. 5385, and H.R. 5386 Before Subcomm. No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess. (1967)); and was the subject of extensive debate in 1968.

4/ These provisions include similar requirements for licenced manufacturers and importers.

5/ We note that the bill has changed the basic definition of prohibited criminals by making one substantive change in the definition of "crime punishable by imprisonment for a term exceeding one year." It omits the current provision that includes in the definition state crimes involving a firearm or explosive that are punishable by a term exceeding one year, even if they are classified as a misdemeanor. The greater potential for abuse of firearms by persons convicted of serious crimes (i.e., crimes punishable by more than one year imprisonment) involving a firearm or explosive provides strong justification for the current formulation. The applicability of federal restrictions should not turn on the mere fortuity of whether a particular state has classified such an offense as a misdemeanor or felony.

Senator GRASSLEY. It is now my pleasure to call the last witness this morning, Jack David, chairman of the Committee on Federal Legislation, The New York City Bar Association, New York City, N.Y.

Welcome, Mr. David.

Mr. DAVID. Thank you.

Senator GRASSLEY. Mr. David, I have time to listen to your testimony. I was fearful that maybe I would not. Therefore, would you proceed and in 5 minutes I will rap the gavel lightly, and then wrap it up in 2 minutes after that?

Mr. DAVID. Fine.

STATEMENT OF JACK DAVID, CHAIRMAN, COMMITTEE ON FEDERAL LEGISLATION, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, NEW YORK CITY, N.Y.

Mr. DAVID. Thank you very much, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity and the Association of the Bar of the City of New York appreciates this opportunity once more to give testimony to aid this committee in its legislative hearings. We have just completed a report on gun control legislation in the 97th Congress. That report in written form is before the committee, and I would like that taken as my written statement.

The report is an update of our committee's 1976 report on gun control legislation, which I would appreciate being made a part of the record as well, together with my remarks today.

Senator GRASSLEY. Yes. Without objection, so ordered.

Mr. DAVID. Thank you.

Our just-completed report on gun control legislation in the 97th Congress deals with various bills, including S. 1030, the McClure bill. In reviewing the legislation and considering it, our committee unanimously opposes the McClure bill. In our report we point out various defects in the McClure bill. Some of them are technical and legal in nature but a couple of those technical and legal ones I think warrant commenting on before getting to the main point.

We point out that the finding of fact in the preamble of S. 1030, that this bill protects a constitutional right to bear arms of each individual citizen, is simply incorrect. The courts over the years have held that that right to bear arms is directly related to the utility of those arms for a militia. I heard the distinguished Senator from Utah this morning reiterate that finding in his statement, and he said that he thought that James Madison would be amazed that courts, legislators, and commentators have rejected the contention that the second amendment provides such a protection for an individual's right to bear arms.

Well, those courts and commentators and legislators who have rejected it have looked into the history. For example, in *United States* v. *Miller,* in a case decided by the Supreme Court in 1939, Justice McReynolds for a unanimous Court rejected the notion that an individual had a second amendment right to bear arms. In doing so, he pointed to statements made by the General Court of Massachusetts in 1784, contemporary with the adoption of the amendment itself; to an act passed by the New York Legislature in 1786; to comments by the General Assembly of Virginia in 1785;

not to mention earlier comments by Blackstone, and by Adam Smith in "The Wealth of Nations."

Simply, whatever right there is to own handguns, it is a property right protected like other property rights, but it is not protected by the second amendment. To the extent that the second amendment is a rallying call, I understand it; to the extent that it is a legal argument, this committee should give careful consideration before making a finding that has fairly well unanimously been rejected by the Supreme Court of the United States and by lower courts following it.

I can also say, Mr. Chairman, that we have trouble with the provision of the bill which would give either House of Congress the opportunity to veto regulations passed by the Treasury Department. We have some question about its constitutionality. We have previously issued a report on the legislative veto and that report was submitted to Congress some time ago but we have question about the constitutionality of that provision.

I understand another committee of the Senate yesterday, I think, recommended that a legislative veto be incorporated in other legislation, but I think that serious attention should be paid to that provision before the McClure bill is sent out of committee in its present form.

However, without going on to any more technical objections, Mr. Chairman, the main objection of the Committee on Federal Legislation to the McClure bill flows not only from the fact that we are lawyers looking at procedural points and looking at constitutional points and evaluating it on that basis, but also that we are lawyers who are concerned with our families and ourselves and our friends and our neighbors. It flows from the fact that this bill, styled a gun control bill, does not help protect us and our families and our neighbors from the muggers and the murderers and the fanatics and the mental defects who use handguns to abuse or kill innocent people. Actually, this bill makes it easier for such people to get handguns.

When the Gun Control Act of 1968 was passed, I understand that a principal objective of the Congress was to protect the citizenry, to protect us from muggers, to protect us from murderers, to protect us from fanatics and from crazy people. One of the ways in which the Gun Control Act sought to do this was to try to keep handguns out of the possession of those kinds of people by requiring all licensed dealers to obtain documentation from a purchaser as to who he was, so as to be able to see if the individual fell in the class of people who we all concede to be dangerous and not eligible for handguns, who are not as responsible as the rest of us would be, as responsible as most gun owners would be. Well, the McClure bill relieves many dealers from that obligation to check that the gun that they are selling is not being sold to a mugger or to a murderer or to a person with a history of psychiatric problems.

A second way that the Gun Control Act sought to protect us from these classes of people, who all of us concede are dangerous to all of us and to our families, was to require that gun dealers who are licensed be prohibited from selling guns to people who are not from their State. Presumably this would facilitate checking the background of the people they could sell to, people from within their

own State. Well, the McClure bill would eliminate this important protection by prohibiting the dealer from selling to out-of-staters only if he knows that the laws in the locality from which the person comes would prohibit that person from having a gun. That is, the gun dealer—unless he made an independent check, and hired a lawyer to check the laws in the foreign jurisdiction—could freely sell the gun to that individual. Therefore, that protection would be out.

A third way that the Gun Control Act sought to protect us from these dangerous classes of people having guns was to require dealers to keep records of their sales. Now the recordkeeping function had a law enforcement purpose, so that we could track guns down, we could trace the guns, and the like. However, it had another purpose as well, Mr. Chairman, and that purpose was to require the dealers selling these guns to think about who they were selling the guns to and to gather the information so that it could later be verified, before the gun was picked up by the purchaser.

Well, the McClure bill weakens that protection too. What the McClure bill does is to excuse that recordkeeping function basically by eliminating the principal enforcement mechanism. The Treasury Department no longer would have the option to go in and check on the records as it does now, or the Justice Department if enforcement was taken over by the Justice Department. Therefore, the gun dealers are given a message by the McClure bill that they need not keep the records any longer because only if the Treasury Department has reason to know that something is wrong could they come in and check on the records, thereby diluting the interest of gun dealers from keeping these important records and from gathering the information to find out whether an individual gun buyer is a dangerous person or not.

It does it in another way, too, because not only is the Treasury Department not allowed to go in and check the records any more if the McClure bill is adopted, but if the gun dealer has not kept his records, he cannot suffer the prospect of losing his license to do business for not doing his duty unless it is proven that he "willfully" misrepresented in a record or "willfully" did not keep his records.

Well, those of us in New York City and in other large cities need help from Congress in keeping handguns away from felons and fanatics who threaten our lives and threaten the lives of our families. New York has very tough gun laws but they are not enough. Our 1976 report cited statistics showing that of the guns used in crime in our city, only 4 percent were acquired in New York. The rest came from out of State.

The district attorney of the Borough of Manhattan, in May of this year, pointed out that in our borough, the Borough of Manhattan, 79 percent of the guns used in felonies came from out of State. The handgun used by a madman to kill John Lennon a few blocks away from my home, that handgun came from out of State. The handgun used by another person with a history of mental derangement to kill Al Lowenstein three floors below my office in Manhattan came from out of State, not from New York.

The Committee on Federal Legislation believes that we need help from Congress to improve the Gun Control Act of 1968 so as to

strengthen the provisions which would keep guns out of the hands of the irresponsible people. We do not need the McClure bill, which would dilute what good the Gun Control Act of 1968 now does.

If there is any valid purpose of Government, it is to help us to be secure from felons and fanatics. The McClure bill, styled as a gun control bill, abdicates this responsibility of trying to keep Americans safe and the effort to make it harder for murderers and muggers and fanatics to get handguns, and in abandoning this effort to protect human life, the McClure bill achieves little more than matters of convenience to handgun dealers and owners.

We have sympathy with the fact that administrative officials sometimes abuse their authority but current law, the power of Congress over the budget, the power of appointment and all the rest is sufficient to discipline those individuals not to violate their responsibilities and not to exceed their authorities. The McClure bill is the wrong way to go at it. It sacrifices the need to keep handguns out of the hands of irresponsible people, simply for the convenience of not filling out forms and not gathering information by responsible people.

Thank you.

Senator GRASSLEY. Thank you very much.

We will probably have a lot of questions that we will want to submit in writing to you because of time being short but I would like to ask you—and it takes off from the last paragraph of your statement in regard to what you consider the present ineffective gun control laws—it was recently reported that Project Manhattan was being dropped; that is where the Bureau of Alcohol, Tobacco, and Firearms was recently helping New York to enforce its own gun laws. It was reported as being abandoned because it was an expensive failure.

Why should the city of New York or the Federal bar, for instance, of the city of New York that you represent, object to legislation aimed at helping the city enforce its gun laws by going after criminals in possession or dealers suspected of violating the law, rather than continuing what I consider to be present ineffective practices and projects?

Mr. DAVID. Well, Mr. Chairman, I am not familiar with the details of Project Manhattan but I can say what it is that we think that we do need help with. What we do need help with is a law nationally that requires every one of our fellow citizens, not only the licensed dealers but every one of our fellow citizens, to carefully consider the facts about who it is that they are selling their handgun to, to gather that information on a piece of paper and to submit it to the FBI and to local law enforcement people who might know of the eligibility of the prospective purchaser for the gun.

We need that. We need a 21-day waiting period or a 20-day waiting period or some reasonable waiting period so that the appropriate law enforcement officials can check on the information gathered by an individual who wants to sell his handgun.

We know that that would be an inconvenience to each handgun owner but we believe that human life would be saved by the inconvenience of just gathering the information and waiting a short while. We believe that that can be accomplished only by the Con-

gress. It can be accomplished only on the Hill here, and it cannot be accomplished individually in the States, no matter how tough our individual laws may be in New York, or in California, or in Massachusetts, or in Illinois, or in Georgia, or anyplace where large cities exist, in particular.

Senator GRASSLEY. I thank you very much for your oral testimony.

Mr. DAVID. Thank you.

Senator GRASSLEY. This wraps up the second hearing on S. 1030. It is my understanding that the chairman of the committee, Strom Thurmond, will probably hold a third hearing on this legislation. That will be when we reconvene after the first of the year.

I want to thank all the witnesses for being here today and contributing to what I believe is a very informative record. Thank you all very much.

The hearing is adjourned.

[Whereupon, at 11:50 a.m., the committee recessed, to reconvene at the call of the Chair.

[Aforementioned reports follow:]

THE ASSOCIATION OF THE BAR
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Gun Control Legislation

By THE COMMITTEE ON FEDERAL LEGISLATION

INTRODUCTION

Since the enactment of the Gun Control Act of 1968 there has been a substantial increase in the incidence of gun-related crimes and it has become evident that the existing system of law is inadequate. Efforts have been underway in both Houses of Congress to enact further gun control legislation and the Executive Branch has indicated support for stronger gun control. Both the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on Crime and Juvenile Delinquency of the Senate Committee on the Judiciary have accumulated a substantial factual record on which to base legislation.

We believe that the contribution of handguns to the current increase in homicide and other violent crimes requires immediate and comprehensive action. In our opinion, the continued existence of an unwarranted supply of handguns is an underlying factor in the decline of our major urban centers. This Committee does not find any substantial justification for the continued widespread public possession of handguns, and, accordingly, we strongly endorse the legislative proposals calling for a prohibition on the manufacture, importation, sale, and private possession of handguns.[1] Whether or not our recommendations are politically feasible at this moment in time, we are of the firmly held conviction that a complete ban on handguns should be the ultimate objective of any new federal gun control legislation.

This report is divided into four parts. Part I describes the current federal law and the congressional proposals for change. Part II examines the constitutional bases for Congress legislating a prohibition on the manufacture, importation, sale, and private possession of handguns. Part III discusses the need for adopting far-reaching gun control legislation. Our recommendations are contained in Part IV.

I. *PRESENT LAW AND PROPOSALS FOR CHANGE*

A. *Current Federal Law*

The Gun Control Act of 1968[2] was enacted with the stated purpose of providing support to local law enforcement officials in their fight against crime. The statute expressly provides that it is not intended to place undue

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Federal Legislation Report (March 22, 1976).

restrictions on law abiding citizens with respect to the acquisition, possession or use of firearms for recreational or other lawful purposes. It attempts to accomplish these ends by two principal means: the elimination of interstate transport of firearms and ammunition, except between licensed dealers; and the elimination of the importation of guns that are not suitable for sporting purposes.

Section 922 of the act makes it unlawful for any person to engage in the business of importing, manufacturing or dealing, without having a federal license, and then provides that no licensed dealer may ship firearms or ammunition in interstate commerce to any person other than another licensed person. The section further provides that no person other than a licensed dealer may transport or receive in the state where he resides any firearms purchased outside the state, or may sell any firearm to any person, other than a licensed dealer, who the seller knows or believes resides in a different state from that of the seller.

Section 922 also forbids licensed dealers from selling firearms or ammunition to someone who does not reside in the licensee's state, or in violation of local law, or where the purchaser would be violating local law, or to persons who have been indicted or convicted of crimes, are fugitives from justice, unlawful users of marijuana or narcotics, or are adjudicated mental defectives or incompetents. Section 922 additionally provides that it shall be unlawful for any person to sell, ship, or receive any stolen firearm or ammunition. Finally, section 925(d) of the act authorizes firearms or ammunition to be imported if they are used for scientific or research purposes, or are generally recognized as particularly suitable for or adaptable to sporting purposes.

The weaknesses in this act are many.[3] The most important are that the act does not reduce the overall size of the existing gun population, nor does it regulate hand-to-hand or street sales of privately owned guns. The provision banning the importation of non-sporting purpose guns does not bar the importation of foreign-manufactured parts and the subsequent domestic assembly in the United States. Most importantly, the act has failed in its stated purpose to support local officials in their fight against crime.

B. *The Legislative Proposals*

At the present time the principal gun control legislation in Congress is embodied in the proposals representing the positions of the House and Senate subcommittees that have dealt with the subject.[4] The positions of these subcommittees are substantially in accord in basic approach, namely to strengthen the restrictions of the Gun Control Act of 1968. The common elements of the legislation are a restriction on multiple sales to individuals, additional requirements for purchasers of firearms, and mandatory sentences for commission of federal crimes while using firearms.

Section 301 of the House bill and section 207 of the Senate bill deal with requirements for purchases from licensed dealers. All purchases must be in person and the purchaser must supply an affidavit setting forth his name,

address, the place where the firearm will be kept, and evidence that the purchase will not violate any local law. Each bill requires that the application be submitted to the Federal Bureau of Investigation and to the chief law enforcement officer of the place where the purchaser intends to maintain the firearm. The law enforcement agencies are given a restricted period of time to respond to the application and if no response is made within that time, the sale may go through.

In addition, section 209 of the House bill and section 203 of the Senate bill restrict the number of sales by dealers to one individual. The House bill provides that one person may not purchase more than two handguns in each 30 day period, and the Senate bill provides for the purchase of no more than two handguns per year. Section 213 of the House bill and section 301 of the Senate bill require mandatory penalties for the use of a firearm during the commission of a federal crime.

There are two additional features of the House bill. Section 203 provides new restrictions upon persons making application to be licensed dealers. Law enforcement checks upon such persons are required and the fees for being a dealer are substantially increased. The other principal feature is the establishment of a National Handgun Tracing Center. Section 210 of the bill requires that serial numbers be placed on all firearms hereafter manufactured or imported and section 302 requires that quarterly reports of guns manufactured, imported and sold by every licensed person under the act be provided to the Treasury Department. The purpose of these provisions is to provide an understanding of the numbers and locations of gun sales in order to establish a picture of the firearms commerce in the United States.

The principal feature of the Senate bill is a prohibition on "Saturday night specials." * Section 204 provides that no handgun may be sold unless it is approved by the Secretary of the Treasury, and section 207 requires certain minimum features on all handguns. These include minimum size requirements and safety features and that the gun must attain a minimum of points for size, weight and additional safety features. Section 301 of the Senate bill also contains reporting requirements, which only require annual reports of manufacture and sale by manufacturers.

Numerous other bills are pending in both Houses of Congress on the subject of gun control. They fall generally into these categories: Some would bar the manufacture, importation, sale, and private possession of handguns.[5] Some would prohibit the manufacture, importation, sale and transfer of handguns.[6] Others would prohibit the manufacture, importation or assembly of "Saturday night specials".[7] Some bills would establish a federal system of handgun owner registration, prohibit multiple handgun sales to individuals, and impose added requirements on purchasers of firearms.[8] Still others would require stiff mandatory prison sentences for persons committing felonies with firearms.[9]

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* Although it is generally agreed that "Saturday night special" refers to a gun that is cheap and easily concealable, congressional definitions have tended to run in the direction of guns not being intended for sporting purposes.

II. *GUN CONTROL AND THE CONSTITUTION*

To determine whether a federal statute restricting handguns would be constitutional, two questions must be answered: (A) Is there a constitutional right to possession of handguns which cannot be infringed by legislation, and (B) does regulation of handguns fall within the scope of any of the subjects on which Congress is empowered by the Constitution to legislate? A review of the relevant decisions demonstrates that Congress may constitutionally enact legislation restricting and prohibiting the possession of handguns by private citizens.[10]

A. *Is There a Constitutional Right to Possess Handguns?*

Debates on the merits of gun control legislation are regularly punctuated by claims of a constitutional right to possess firearms. The source of these claims is the Second Amendment to the Constitution, which provides:

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Although spirited controversy as to the meaning of the Second Amendment continues unabated among commentators,[11] courts over a long period of time have consistently given the amendment a very narrow construction. The Second Amendment as so interpreted places no restrictions on Congress' ability to regulate handguns.

A constitutional provision concerning the right to "bear Arms" is directed at checking power. The question is what the framers of the Constitution intended. There are basically three relationships which could have been intended to be affected: (1) the individual against the world; (2) the populace against the government, whether state or federal; and (3) the state government against the federal government. The first possibility, that the framers were concerned with the right of individuals to protect their homes and their persons from whatever depredations might confront them, appears to be without historical support.[12] The amendment itself speaks of the "security of a free State." The disputes have centered around the second and third possibilities.

The initial question is the proper interpretation of the term "Militia." The practice in Europe of maintaining large standing armies while prohibiting the general populace from having guns led to a preference in colonial America for the militia as the primary military force. This force would be drawn from the people and would be active only in time of military need.[13]

Some have argued that the militia was regarded as the populace at large—or at least those members of the populace capable of bearing arms.[14] To these commentators, militia meant the "unorganized militia," so that the Second Amendment must be read as permitting the populace to maintain arms as a check against excesses of any or all government. This position is sometimes characterized as more extreme than it really is. The framers of the

Constitution need not have created a "right to revolution" or a license to band together in paramilitary organizations to have established a check on the government by permitting the populace to keep and bear arms.[15] Whatever the merits of the "unorganized militia" analysis may be, however, it has never found judicial favor.

The federal courts have long regarded the Second Amendment as concerned only with the "organized militia" maintained by the states. In 1875, the Supreme Court ruled in *United States* v. *Cruickshank*[16] that the Second Amendment restricted Congress alone and not state governments. More recently, in *United States* v. *Miller*,[17] the Supreme Court held that Congress could regulate firearms so long as there was no evidence of a relationship between the regulation and the preservation or efficiency of the state militia. The Court said that Miller could not attack his indictment for interstate shipment of a sawed-off shotgun under the Second Amendment:

> "In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."[18]

Some have argued that the *Miller* case should be read narrowly, since evidence of a military use can be shown as a matter of fact for most kinds of weapons.[19] However, federal courts after *Miller* have read the decision as requiring a showing that the challenged legislation actually interfered with the state militia. Under this standard, Second Amendment challenges to federal gun control legislation uniformly have been rejected.[20]

Further, even if the Second Amendment were to be interpreted to refer to an "unorganized militia," it would not follow that Congress would be barred from regulating the ownership of handguns. Such regulation would still be constitutional unless handguns were regarded as "Arms" within the meaning of the Second Amendment. It appears instead that the "Arms" of the militia were understood to consist of rifles and muskets.

In addition to the constitutional provisions and old state statutes quoted in *United States* v. *Miller*[21] and other secondary sources,[22] there are a number of early cases considering whether handguns are "Arms" within the meaning of the Second Amendment. While the decisions are not uniform, the weight of authority is that handguns do not constitute such "Arms."[23]

This position is most effectively expressed in *State* v. *Workman*,[24] where the Supreme Court of Appeals of West Virginia wrote:

> ". . . in regard to the kind of arms referred to in the amendment, it must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets,—arms to be used in defending the state and civil liberty,—and not to pistols, bowie-knives,

> brass knuckles, billies, and such other weapons as are usually employed in brawls, street fights, duels, and affrays, and are only habitually carried by bullies, blackguards, and desperadoes, to the terror of the community and the injury of the state." [25]

Thus, in our view, the Second Amendment poses no barrier to congressional efforts to reduce "the terror of the community and the injury of the state" by prohibiting the private possession of handguns.

B. *Does Congress Have Power to Regulate the Manufacture, Possession and Sale of All Handguns?*

While several congressional powers could be invoked in support of gun control legislation,[26] justification is ordinarily found under Congress' power to regulate interstate and foreign commerce.[27] There can be no serious dispute that certain kinds of gun-related activities—for example, interstate sales of firearms—can be regulated under the commerce clause. The disagreements arise over how far Congress may go in regulating local gun activity under its power to regulate matters "affecting" commerce.

In *United States* v. *Bass*,[28] the Supreme Court recently avoided a constitutional issue concerning 18 U.S.C. § 1202, which prohibits the transportation, receipt or possession of guns by felons, by holding that proof that the prohibited conduct in each case was in commerce or affected commerce was required by the statute. Prior courts of appeals decisions had differed as to whether that statute was a constitutional exercise of the commerce power without such proof.[29]

However, in *Perez* v. *United States*,[30] a case decided shortly before the *Bass* case, the Supreme Court had laid the groundwork for the power to create a federal criminal law under the commerce clause. The *Perez* case concerned the constitutionality of a provision in Title II of the Consumer Credit Protection Act, 18 U.S.C. §§ 891 *et seq.*, making loansharking a federal crime. In holding that Perez had been lawfully convicted despite the absence of proof of the effect of his conduct on commerce, the Court cited a variety of reports and statistical studies providing evidentiary support for the congressional finding that, in the aggregate, loansharking had an effect on commerce. It concluded, therefore, that Congress could prohibit the practice regardless of the extent to which the activities of each particular loanshark may have affected commerce.

An examination of *Perez* and its progeny, and of other federal criminal legislation regulating local activity, points out what may have led the Supreme Court to take a very narrow position in the *Bass* case, namely the lack of any substantial legislative findings. In *Perez*, the Court put great emphasis on the findings made by Congress of the impact of loan sharking on interstate commerce, even as a local activity, and on the very substantial evidence which was available to Congress to support those findings. In *Bass*, in contrast, there was virtually no legislative history to guide the Court in its interpretation of congressional intentions.

The implication of the limitation on Congress' attempted exercise of

power in the *Bass* case is that if gun control legislation is supported by substantial documentation and carefully drawn congressional findings concerning the effects of the proscribed activity on interstate commerce generally, the Supreme Court would sustain the exercise of power under the commerce clause even if the activity of specific individuals were purely local in nature.

In a number of cases involving federal gun control legislation arising after *Bass*, courts have followed *Perez* to uphold the power of Congress to regulate firearms felonies without a showing in each case of a nexus with interstate commerce.[31] In *United States* v. *Nelson*,[32] the Fifth Circuit affirmed a conviction under 18 U.S.C. § 922(a)(6), which prohibits the making of false statements in connection with the acquisition of a firearm, in spite of a failure to show a nexus between the defendant's false statements to the gun dealer and interstate commerce. Although the individual activity was clearly local, the court found that under *Perez* the Congress does have the power to regulate an intrastate activity, an isolated instance of which may have no direct connection with interstate commerce, because that intrastate activity in the aggregate does impose a burden on interstate commerce.[33]

The decision in *Nelson* leaves open the question whether Congress has the power under the *Perez* theory to regulate possession of a firearm. It could be argued that the manufacture and sale of firearms presents a stronger case for federal regulation since a potential impact on interstate commerce is discernible, while possession of a firearm could be an entirely and perpetually local activity in a given instance. Such an argument ignores the aggregate effect on commerce of a substantial number of people possessing firearms. In an analogous situation, regulation of the possession of narcotics and other controlled substances under 21 U.S.C. §§ 841 and 844, and predecessor statutes, courts have upheld the regulation without a showing in each case of a nexus with interstate commerce.

In *Deyo* v. *United States*,[34] for example, the Ninth Circuit affirmed a conviction for possession and sale of a drug against the contention of the defendant that the conviction was invalid because there had been no proof of a connection between the defendant's activities and interstate commerce. The court described at length the congressional findings supporting federal control of the possession of these drugs. The court concluded that effective interstate regulation was not possible if intrastate transactions were not also regulated.[35]

The conclusion to be drawn from the narcotics possession cases is that if it can be shown through proper congressional findings that possession of handguns as a class of activity has an effect on interstate commerce, then individual possession could be legitimately proscribed without any showing in each case of a nexus with interstate commerce, notwithstanding that a particular weapon had never been in interstate commerce. Indeed it is the possession of handguns that can be viewed as being responsible for their manufacture, importation and sale. Thus, if undertaken after congressional findings of effect on interstate commerce based on substantial investigation, federal legislation banning the manufacture, sale and possession of handguns would in our view be authorized by the commerce clause.

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III. *THE EVIDENCE IN SUPPORT OF STRICTER GUN CONTROL*

A. *The Use and Misuse of Guns*

A proper perspective of the role of firearms in our society requires consideration of the physical nature of guns, the extent of their ownership, the nature of their legitimate uses, and the extent of their accidental or criminal misuse.

The single most significant fact concerning firearms is that they are designed to kill.[36] A firearm is a weapon, and whether viewed from a historical or from a functional point of view, the purpose, design and operation of a firearm is to shoot a projectile of such size and velocity so as to create substantial damage to the target.

Some uses of firearms are undoubtedly justifiable and necessary, such as military uses or police uses. In some rural areas it is possible that firearms may be necessary to obtain food or to use in self-defense.[37] The assertion that in a modern, urban society firearms have a legitimate use in "self-defense" is discussed later in this report. In our view, however, the principal legitimate private use of firearms in today's society is hunting for sport and target shooting.[38] Both of these uses are recreational.

The physical characteristics of firearms in large measure determine the uses. Thus, rifles and shotguns are more suitable for use as sporting weapons or hunting weapons because of their size, accuracy and adaptability. Since most of these weapons are approximately three feet in length, they are difficult to conceal. While handguns may be used for target shooting, or even for hunting,[39] the principal use of a handgun is at close range and its most obvious characteristic is that it is easily concealable.

It is estimated that there are in excess of 100 million guns presently in the hands of private owners in the United States.[40] At least two-thirds of these weapons are estimated to be rifles and shotguns, and the remainder are handguns.[41] The estimated number of handguns ranges from 25 million to over 40 million, with most current estimates adopting the larger number.[42] During each of the last 5 years, over 1.5 million handguns have been manufactured in the United States and over 400,000 have been imported.[43] The estimated number of handguns made by the assembly of imported parts is well over 700,000 per year.[44]

In 1973, there were 19,510 homicides in the United States. Handguns were involved in the deaths of 10,323 of these victims, or 53% of the total.[45] The total number of homicides involving firearms was 13,081, or 67% of all homicides.[46] In that year, approximately 159,000 of the approximately 252,000 armed robberies, or 63%, were committed with firearms, and approximately 108,000 out of approximately 416,000 aggravated assaults, or 26%, were committed with the use of a firearm.[47]

From 1966 through 1973, handgun homicide as a percent of total urban homicide increased from 37% to 53%, and firearm assaults as a percentage of total urban assaults increased from 19% to 29%.[48] Since 1966, the rate of handgun homicide has increased more than three times as much as the in-

crease in rate for homicide by all other means.[49] In 1973, nearly four times as many homicides were committed with handguns as with long guns.[50] In one city, about 70% of all criminal misuse of firearms involved handguns,[51] and in New York City, handguns may be involved in over 90% of all firearm crimes.[52] Handguns are involved in a substantial, and increasing, percentage of all violent crime.[53] In particular, robbery homicide, usually involving handguns, has increased far out of proportion to all robberies and all homicides.[54]

The unlawful use of firearms can be analyzed in terms of two separate areas: street crime, or crime committed by an assailant on a victim who was not previously acquainted with him; and interpersonal crime, where the assailant and the victim were previously known to each other. Most firearm homicides involve people who were previously acquainted. Heat-of-passion attacks involving spouses or acquaintances, and revenge-oriented assaults, together with accidental shootings, constitute a substantial majority of the handgun homicides.[55] Gun misuse in general, including accidental shootings and interpersonal crime, appear to be highest in areas where the total number of guns are highest.[56]

The most disruptive problem facing urban areas concerning the use of handguns is the threat of street crime, particularly armed robbery, assault and rape. There is undoubtedly not a small shop owner in the City of New York who does not live in fear of handgun robbery.[57] In many instances, business operations require a constant vigil against invasion. In some areas of New York City, businesses simply close at sundown, and whole areas of commerce turn into silent streets of steel fences at night. These businesses are prevented from operating by the fear of crime.[58] There can be little doubt that such a situation is a burden on interstate commerce.

In many areas of this city and others, many people live in constant fear of being robbed in a subway, in a park, on the sidewalk, in a building lobby, or in an elevator.[59] Instead of going out, people stay locked in at home, particularly at night. This, too, evidently burdens and restricts the commerce of the city. People fear to travel to the city for business or for entertainment. People move out of the city because they perceive the city as crime-ridden. Business and jobs move with them.

The statistics demonstrate that a handgun is five times as likely to result in death as a knife in connection with aggravated assaults,[60] and certainly it is the fear of handgun-related crimes that is a substantial contributor to our present urban decline.[61]

B. *The Failure of State and Local Legislation*

State and local laws on gun control are a patchwork[62] of divergent regulations, unevenly enforced. While some states, such as New York, have a strict control system, many other states have little or no control. One survey of the field reports that:

> "Twenty-five States require a license to sell handguns at retail, 8 require a permit (or the equivalent) to purchase a handgun, 11 require

a waiting period between purchase and delivery of a handgun, 1 requires a license to possess a handgun, 29 require a license to carry a handgun, 19 prohibit the carrying of a concealed handgun, 18 require a license to carry a handgun in a vehicle, 22 prohibit the carrying of a loaded firearm in a vehicle, and 4 States require the registration of firearms." [63]

However, neither the stringency of local law, nor the vigor of its enforcement, can insure a low incidence of gun violence. New York City's police commissioner has testified that, in spite of strict state and city laws:

"[I]n New York City between 1965 and 1970, while the number of homicides doubled, the number committed with firearms nearly quadrupled. Last year [1970] over half of the murders in New York involved the use of firearms, compared with barely one quarter of those in 1965. It is clear to me from figures like these that the increased availability of guns, notwithstanding our local controls, has had a tremendous impact on the number of murders in our city." [64]

At the same time, it was estimated that there may be 500,000 illegal guns in New York City, as against 20,000 that are legally registered here.[65]

A recent study shows the sources of guns used in crimes committed in a number of major cities.[66] The figures emphasize the apparent ease with which criminals can acquire guns from out of state sources. The statistics for some of these cities are:

New York	4%	from New York (South Carolina—20%; Florida—11%; Georgia—8%; Virginia—6%)
Detroit	8%	from Michigan (Ohio—19%; Kentucky—9%; Georgia—9%; Mississippi—6%)
Boston	35%	from Massachusetts (Florida—11%; South Carolina—7%)
Philadelphia	54%	from Pennsylvania
Los Angeles	82%	from California
Miami	82%	from Florida
Seattle	76%	from Washington
New Orleans	63%	from Louisiana
Dallas	87%	from Texas
Louisville	82%	from Kentucky
Denver	78%	from Colorado
Minneapolis	61%	from Minnesota

New York[67], Michigan[68], Massachusetts[69], and the city of Philadelphia[70], require a license or permit in order to purchase a handgun. Only a few states require such a license.[71]

California[72] and Washington[73], and the cities of Miami[74] and New Orleans[75] require an application for purchase of a handgun to be filed, and a waiting period before delivery.

Pennsylvania[76] and the city of Minneapolis[77] require the filing of a report of the sale of a handgun. The remaining states and cities on the above list do not have the above requirements, although most prohibit sales of handguns to minors.[78]

There is a striking correlation between the degree of local regulation and the amount of interstate traffic. The statistics demonstrate that where there is little or no effective regulation, firearms are mainly obtained locally, but that where there is stringent local regulation, efficient channels of commerce soon appear to make out-of-state guns available.[79]

In addition to the sources of guns, studies have reviewed the age of guns used in various crimes. A study done in New York City on handguns confiscated during December, 1973, showed that 58% of the guns had been manufactured or imported after the Gun Control Act of 1968, and more substantial numbers of guns were manufactured or imported in the more recent years,[80] as follows:

Year of First Sale	*Per Cent of Guns Confiscated*
1973	19%
1972	14%
1971	11%
1970	8%
1969	6%

A more general survey of 16 cities conducted in 1974 shows that 66% of the guns used in criminal activities during the surveyed period were manufactured or imported after 1968.[81] The same study shows that only 6% of handguns used in crimes are reported as having been stolen, which demonstrates that almost all guns used in criminal activities were purchased. Undoubtedly, many of these purchases were in violation of existing federal, state, or local laws,[82] which demonstrates the substantial inability of the existing scheme of regulation to control the situation.

C. *Experience in Other Countries*

Other modern industrialized nations have renounced the private ownership of handguns or strictly required licensing or registration of handgun ownership, with beneficial effects on crime rates. While cultural differences may distort some comparisons, useful parallels can be drawn. For example, Japan has prohibited all possession of firearms since 1964 and in every year since has enjoyed a drop in the number of crimes committed with firearms.[83]

Similarly, stringent police investigation of all applicants for gun licenses in England appears to have tempered the nature of crime within that relatively (by contrast to the United States) low crime country. Thus, English statistics indicate that when intentional killings do occur, an Englishman is

one-third less likely than his American counterpart to resort to a gun of any sort as the murder weapon.[84]

Indeed, unlike the United States, each of 29 European countries recently surveyed required either a license to carry a firearm or registration of the ownership or sale of each privately owned firearm or both.[85] With strict national regulation of gun ownership so common elsewhere, one must question what has encouraged us to cherish that which other Western countries have almost universally renounced.

IV. *RECOMMENDATIONS*

Notwithstanding stringent local regulations and the Gun Control Act of 1968, it is an inescapable fact that violent crimes involving the use of handguns are increasing in the major urban centers at a rate at least comparable with the national increase in such crimes.[86] There is a substantial commerce in purchasing guns in states that do not have stringent local laws, transporting them in violation of federal law into major urban centers and selling them in violation of local law.[87]

It is unrealistic to look to the individual states, cities and towns for effective firearms control.[88] Strict controls by one state or city have been nullified by the emergence of a substantial traffic in handguns coming from jurisdictions having lax controls or none at all. Good sense and orderly government counsel that the federal government no longer abdicate handgun regulation to the states and that we take strong national action against further unnecessary crime.

As noted earlier, we strongly favor legislation prohibiting the manufacture, importation, sale and private possession of handguns, with certain limited exemptions.[89] Since the legislation we support would require the federal government to gather handguns now privately owned, or to develop a system for rendering such handguns inoperative, we endorse the concept of paying prior owners a bounty for all handguns and ammunition surrendered. Such payment would be desirable and also would avoid a challenge based on a taking without compensation.

We believe that further handgun legislation is so necessary that if a complete prohibition on private ownership is not possible of attainment, then we would support legislation barring all further importation, manufacture and sale of handguns, or their parts, and registration of all existing handguns limited to the life of the present owner. Under this alternative, we would propose a ban on any transfers of handguns and an escheat of handguns to the government on the death of each present owner.

In endorsing an outright prohibition on the private ownership of handguns, we believe that any partial measure merely invites a further intolerable proliferation of handguns. Thus, in our view, the focus on the so-called "Saturday night special" is counter-productive. Recent studies indicate that Saturday night specials constitute 35%–45% of the handguns used in urban crime. All revolvers with a three-inch barrel or less constitute over 70% of such guns.[90] The studies also demonstrate that in many areas higher priced handguns are used as extensively or more extensively than the less expensive

ones.[91] Consequently, to ban only Saturday night specials would simply result in other handguns, slightly more expensive and of better manufacture,[92] being used in place of the cheaper ones. We do not think that it would be a material advance to enlarge the calibre or improve the quality of the weapons in the hands of criminals.[93]

As for the proposals calling for the registration of handguns, we believe that they would create extremely cumbersome problems of enforcement, particularly with regard to private resales of guns. Moreover, registration is clearly inadequate to halt much of that class of violence which occurs between assailants and victims previously known to one another, including shootings among family members, whether intended or accidental.

With respect to the proposals placing additional requirements on prospective purchasers, an analysis of the effect of local regulation indicates to us that such proposals will not have any impact unless a mandatory duty is placed on the law enforcement agencies to act on applications and unless a purchase is not allowed to be completed until the law enforcement officials approve. Moreover, the requirement of affidavits and law enforcement checks places a substantial additional burden on local police departments and upon the FBI and will require substantial increased enforcement capabilities in the Department of the Treasury. Thus these bills likely would result in increased expenditures, additional bureaucracy, and further burdens on already over-burdened law enforcement agencies, without any effect at all on the crime rate.

As between the House bill and the Senate bill, however, our Committee prefers the approach taken by the former*. We do not believe that "Saturday night special" legislation is desirable or helpful, while the establishment of the National Handgun Tracing Center will be a very valuable, if small, step forward. Documenting the flow of handguns in commerce is an essential step to effective regulation.

We realize that banning handguns, as we propose, will not prevent all crime. However, much of the recent substantial increase in crime rates is related to the use of handguns. In our view, banning handguns should reverse this trend and cause a reduction in overall crime rates with a specific reduction in the more serious crimes of homicide, felonious assault and robbery.

The suggestion that there is no connection between the ownership of guns and crime is, in the opinion of this Committee, contrary to the established facts. It is evident that the more guns that there are in circulation, the more opportunities there are for the criminal misuse of a gun,[94] and the statistics bear this out.[95] The data from urban centers shows that the substantial increase in private gun ownership during the 1960's bears a direct relation to the substantial increase in gun-related crimes.[96]

Another argument against a prohibition on the ownership of handguns is that gun control deals with the symptom of crime rather than the disease.[97] To an extent this is true, since gun control will not eliminate all crime. However, it is the symptom itself that is particularly in need of treatment in this instance. Opposition to gun control is often joined with a claim that the proper response is longer or mandatory prison sentences for persons convicted of firearm crimes.[98] Not only does this approach deal with the symptom of

* See pages 2–3, *supra*.

crime rather than the cause, but the possibility of longer or mandatory criminal sentences affecting the gun crime rate is certainly less likely to be effective than banning the private possession of handguns.

Another argument against the prohibition involves the asserted need for firearms in self-defense. This is perhaps the most emotional of the issues raised.[99] We do not see that the proper response to crime in our society is to have each citizen arm himself, and in effect to encourage vigilantism. We do not believe that either a "High Noon" or a "Death Wish" philosophy is a proper social response to the threat of crime.[100]

The potential presence of firearms has not been effective in deterring crime. A gun kept in the home is far more likely to be used on a family member, and constitutes little or no deterrence to burglary or robbery. The ordinary citizen is likely to wind up seriously injured by provoking a shoot-out with an armed criminal.[101] In a shoot-out in a place of business, a store owner has a 50% chance of being killed.[102] Moreover, even if "self-defense" of this kind were deemed proper, there is no reason why handguns are necessary. Many police departments have settled on the shotgun as the most effective defense against a potentially lethal assault.[103]

The assertion that a prohibition on handguns is but a first step in the elimination of all firearms is in our opinion simply an emotional argument. There are ample bases for drawing distinctions between handguns and long guns, including the constitutional arguments, the physical characteristics of each and the actual statistics concerning criminal misuse.

In making our recommendations, we do not expect that all handguns will be eliminated overnight or that all gun-related crime will instantly cease. What we do expect is that, over a period of time, the continued depletion of the supply of handguns will cause a reduction in the amount of gun-related crime, so that we should see substantial reduction in the crime rates.

CONCLUSION

For the reasons stated in this report, we think the time has come for Congress to legislate a ban on the private ownership of handguns.[104]

COMMITTEE ON FEDERAL LEGISLATION

JOHN D. FEERICK, *Chairman*

HARVEY E. BENJAMIN	GERALD T. McLAUGHLIN
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FOOTNOTES

[1] E.g., H.R. 40, 94th Cong., 1st Sess. (1975) (Representative Jonathan B. Bingham); H.R. 9780 (Representative John Conyers, Jr.); S. 750, 94th Cong., 1st Sess. (1975) (Senator Philip A. Hart).

[2] P.L. 90-618 (Oct. 22, 1968), 18 U.S.C. §§ 921 et seq. (1970).

[3] *See generally* Comment, *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* 51 J. of Urban L. 491, 510 (1974); Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, IV J. of Legal Studies 133, 191 (1975) [Hereinafter "Zimring, Firearms & Federal Law"].

[4] The House bill is H.R. 11193, 94th Cong., 1st Sess. (1975). The Senate bill was reported to the Judiciary Committee on December 1, 1975, but has not as yet been formally introduced or numbered. The House bill was substantially amended by the full Judiciary Committee to provide for a ban on the manufacture of handguns of less than certain specific sizes, and the revised bill has been referred back to the Subcommittee on Crime.

[5] *See* note 1 *supra*.

[6] *E.g.*, H.R. 3675, 94th Cong., 1st Sess. (1975).

[7] *E.g.*, H.R. 3773, H.R. 9022, H.R. 9763, 94th Cong., 1st Sess. (1975); S. 1880, S. 2153, S. 2186, 94th Cong., 1st Sess. (1975).

[8] *See*, S. 1447, S. 2153, 94th Cong., 1st Sess. (1975).

[9] *E.g.*, H.R. 4310, 94th Cong., 1st Sess. (1975).

[10] Of course, a particular piece of legislation nevertheless may be unconstitutional. Any gun control law involving registration provisions must be drafted with care to avoid Fifth Amendment problems. For example, in *Haynes* v. *United States*, 390 U. S. 85 (1968), the Supreme Court held that a provision of the National Firearms Act was unconstitutional as applied to Haynes because it required him to incriminate himself. *See generally* "Firearms Control and the Fifth Amendment," Appendix K to Newton & Zimring, *Firearms and Violence in American Life* (National Commission on the Causes and Prevention of Violence, Staff Report, 1969). [The Newton & Zimring report is hereinafter referred to as "National Violence Commission Staff Report"].

[11] *See, e.g.*, ABA Section of Criminal Justice Report Accompanying Resolution 101A, pp. 22–29 (August, 1975) [Hereinafter "ABA Section Report"]; Levin, *The Right to Bear Arms: The Development of the American Experience*, 48 Chicago-Kent L. Rev. 148 (1971) [Hereinafter "Levin"]; Hardy & Stompoly, *Of Arms and the Law*, 51 Chicago-Kent L. Rev. 62 (1974) [Hereinafter "Hardy & Stompoly"]; "The Second Amendment and the Right to Bear Arms," Appendix J to National Violence Commission Staff Report; Sprecher, *The Lost Amendment*, 51 A.B.A.J. 665 (1965); Hays, *The Right To Bear Arms, A Study In Judicial Misinterpretation*, 2 Wm. & Mary L. Rev. 381 (1960) [Hereinafter "Hays"]; Levine & Saxe, *The Second Amendment: The Right To Bear Arms*, 7 Houston L. Rev. 1 (1969).

[12] *See, e.g.*, Levin at 159, 162; National Violence Commission Staff Report, Appendix J at 253–58.

[13] *See, e.g.*, Levin at 151–54; National Violence Commission Staff Report, Appendix J at 253–58.

[14] *See, e.g.*, 3 Story, *Commentaries on the Constitution* 746–67 (1833); Black, *The Bill of Rights*, 35 N.Y.U. L. Rev. 865, 873 (1960); Hardy & Stompoly at 70-71; Hays at 405–06.

[15] *Cf.* National Violence Commission Staff Report, Appendix J at 255.

[16] 92 U.S. 542 (1875). *See also Presser* v. *Illinois*, 116 U.S. 252 (1886); *Miller* v. *Texas*, 153 U.S. 535 (1894); *United States* v. *Karnes*, 437 F.2d 284, 287 (9th Cir.), *cert. denied*, 402 U.S. 1008 (1971).

[17] 307 U.S. 174 (1939).

[18] *Id.* at 178.

[19] Such arguments are criticized by the ABA Section of Criminal Justice. See ABA Section Report at 24–25.

[20] *See, e.g., Cases* v. *United States,* 131 F.2d 916 (1st Cir. 1942), *cert. denied sub nom. Velasquez* v. *United States,* 319 U.S. 770 (1943); *United States* v. *Tot,* 131 F.2d 261 (3d Cir. 1942), *rev'd on other grounds,* 319 U.S. 463 (1943); *United States* v. *Adams,* 11 F. Supp. 216 (S.D. Fla. 1935). *See generally* ABA Section Report at 22, and the recent cases of *United States* v. *Powell,* 423 U.S. . . (1975); *Barrett* v. *United States,* 44 U.S.L.W. 4050 (1976).

[21] 307 U.S. 174 (1939).

[22] *E.g.,* ABA Section Report at 24, 28.

[23] Those cases which hold that handguns do not come within the Second Amendment's concept of "Arms" do so on the ground that handguns are not the ordinary weapons used by the militia. *See, e.g., Moore* v. *Gallup,* 267 App. Div. 64, 45 N.Y.S.2d 63 (3d Dep't 1943), *aff'd mem.,* 293 N.Y. 846, 59 N.E.2d 439 (1944); *Pierce* v. *State,* 42 Okla. 272, 275 P. 393 (1929). But some courts have considered army or navy pistols to be weapons protected by the Second Amendment. *See Glasscock* v. *City of Chattanooga,* 157 Tenn. 518, 11 S.W.2d 678 (1928); *Holland* v. *State,* 33 Ark. 560 (1878). The minority position is that the possession of pistols of any kind may not be prohibited. *See People* v. *Zerillo,* 219 Mich. 635, 189 N.W. 927 (1922); *In re Brickey,* 8 Idaho 597, 70 P. 609 (1902).

[24] 14 S.E. 9 (1891).

[25] *Id.* at 11.

[26] The National Firearms Act, 26 U.S.C. §§ 5801 *et seq.,* which imposes taxes upon transfers of such weapons as machine guns and sawed-off shotguns and upon dealers in those weapons, has been upheld as a valid exercise of Congress' power to lay taxes under Article I, Section 8, clause 1. *See Sonzinsky* v. *United States,* 300 U.S. 506 (1937).

Title VII of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. App. §§ 1201–02, bars "in commerce or affecting commerce" the receipt, possession, or transportation of firearms by felons and certain others. This refers to Congress' power under Article I, Section 8, clause 3. The Act contains a set of four "findings" as to the effect of the activities sought to be prohibited. In addition to burden on commerce, these findings, which apparently were not based on hearings or other evidence, are that the prohibited activities are:

—a threat to the safety of the President and the Vice President;

—an impediment or a threat to the exercise of free speech and the free exercise of a religion; and

—a threat to the "continued and effective operation" of the federal and state governments.

These bases for gun control legislation have been regarded as dubious. *See United States* v. *Bass,* 434 F.2d 1296 (2d Cir. 1970), *aff'd on other grounds,* 404 U.S. 336 (1971). *But see* 61 A.B.A.J. 1081 (1975).

In addition, some kinds of gun control legislation—for example, legislation requiring a course of training in order to qualify for a license to possess a gun—might be justified under Congress' power to "provide for organizing, arming, and disciplining, the Militia." Article I, Section 8, clause 16. Although this power is qualified by the state's "Authority of training the Militia according to the discipline prescribed by Congress," it appears open to Congress to prescribe standards of training in the use of guns.

[27] Article I, Section 8, clause 3.

[28] 404 U.S. 336 (1971).

[29] Compare *United States* v. *Synnes*, 438 F.2d 764 (8th Cir. 1971), *vacated on other grounds*, 404 U.S. 1009 (1972), holding the statute constitutional, with the Second Circuit's opinion in *Bass*, reported at 434 F.2d 1296, expressing substantial doubt as to constitutionality if proof of effect on commerce were not required.

[30] 402 U.S. 146 (1971).

[31] *See, e.g., United States* v. *Andrino*, 497 F.2d 1103 (9th Cir.), *cert. denied*, 419 U.S. 1048 (1974); *United States* v. *Garner*, 465 F.2d 265 (7th Cir. 1972); *United States* v. *Lebman*, 464 F.2d 68 (5th Cir.), *cert. denied*, 409 U.S. 950 (1972); *United States* v. *Ruisi*, 460 F.2d 153 (2d Cir.), *cert. denied*, 409 U.S. 914 (1972).

[32] 458 F.2d 556 (5th Cir. 1972).

[33] In *Huddleston* v. *United States*, 415 U.S. 814, 833 (1974), the Supreme Court stated without discussion that Congress did not intend to require a showing of a nexus with interstate commerce in prosecutions under 18 U.S.C. § 922(a)(6).

[34] 396 F.2d 595 (9th Cir. 1968).

[35] *See also United States* v. *Lopez*, 459 F.2d 949 (5th Cir.), *cert. denied sub. nom. Llerena* v. *United States*, 409 U.S. 878 (1972); *United States* v. *Cerrito*, 413 F.2d 1270 (7th Cir. 1969), *cert. denied*, 396 U.S. 1004 (1970); *United States* v. *Fields*, 410 F.2d 373 (9th Cir.), *cert. denied*, 396 U.S. 965 (1969); *White* v. *United States*, 399 F.2d 813 (8th Cir. 1968).

[36] *See, e.g.*, Statement of Mr. Carey, Hearings before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, 94th Cong., 1st Sess., Vol. 2, at 488 [Hereinafter "House Firearms Hearings"]; United States Conference of Mayors, Handgun Control Project Newsletter, Vol. I, No. 3, July, 1975, at 3. *See also*, statement of Mr. Chalapis, House Firearms Hearings, Vol. 3, at 1136 ("Since the invention of firearms, wars have been won or lost depending upon the ability to devise, manufacture, and strategically use these weapons.").

[37] *See*, Statement of Rep. Symms, House Firearms Hearings, Vol. 1, at 99.

[38] *See, e.g.*, statement of Ms. Beebe, House Firearms Hearings, Vol. 3, at 901; Comment, *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* 51 J. of Urban L. 491, 496–99 (1974).

[39] *See, e.g.*, Statement of the Wisconsin Rifle & Pistol Association, House Firearms Hearings, Vol. 2, at 608–09; Statement of Mr. Glasson, House Firearms Hearings, Vol. 3, at 1114.

[40] *See, Statistical Estimate on United States Gun Density*, Bureau of Alcohol Tobacco and Firearms, Department of the Treasury, printed as Appendix A to *Gun Abuse in Ohio*, Administration of Justice Committee, in House Firearms Hearings, Vol. 4, at 1641–42. [The Bureau of Alcohol, Tobacco and Firearms is hereinafter referred to as "ATF"]. *See also* Comment, 51 J. of Urban L. 491, 494 (1974).

[41] *See, Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1530.

[42] *See, e.g.*, Massachusetts Council on Crime and Correction, *A Shooting Gallery Called America*, at 1 (1974) [Hereinafter "Massachusetts Council Report"]; National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime*, at 213 (1973); 1975 Congressional Quarterly 798.

[43] *See*, ATF Statistical Estimate on United States Gun Density, in House Firearms Hearings, Vol. 4, at 1641.

[44] *See*, ABA Section Report at 10–11 (Chart 1): United States Conference of Mayors, handgun control . . . issues and alternatives, at 27 (1975) [Hereinafter "Conference of Mayors Project Report"]. *See generally*, Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 264–68.

[45] Uniform Crime Reports for the United States, Federal Bureau of Investigation, Department of Justice (1974), cited in Bayh, *Fact Sheet on Firearms and Hand-*

guns, submitted to Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary, United States Senate (May, 1975). [Hereinafter "Bayh Fact Sheet"]. There are about 25,000 gun deaths per year in the United States (12,000 homicide, 10,000 suicide, 3,000 accident), and about 200,000 firearms injuries. Statement of Rep. Fauntroy, House Firearms Hearings, Vol. 1, at 21.

46 Bayh Fact Sheet; ABA Section Report at 8.

47 Bayh Fact Sheet; ABA Section Report at 8. *See also Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1520, 1557–62.

48 Zimring, Firearms & Federal Law (*supra* note 3) at 172 (Figure 2).

49 Zimring, Firearms & Federal Law at 195; *see Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1547. From 1968 to 1973 total homicide increased 42%, robbery increased 46%, and aggravated assault increased 47%. See 121 Cong. Rec. S. 9685 (June 5, 1975) (Statement of Sen. Bayh).

50 Zimring, Firearms & Federal Law at 170; Massachusetts Council Report at 2. See also Statement of Mr. Russell, House Firearms Hearings, Vol. 2, at 768.

51 ATF Project Identification for Washington, D.C. Study, at 7–8 (1975) [Hereinafter "ATF Project I Wash. D.C."]; See also Comment, 51 J. of Urban L. 491, 495 (1974).

52 *See* Statement of Commissioner Murphy, Hearings before the Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess., at 199 (1971) [Hereinafter "Senate Handgun Hearings"].

53 Zimring, Firearms & Federal Law at 170, 194–95. *See also*, Statement of the North American Handgun Association, House Firearms Hearings, Vol. 2, at 809; Edwards, *Commentary: Murder & Gun Control*, 18 Wayne L.R. 1335, 1338 (1972) [Hereinafter "Edwards Commentary"].

54 *See* Block & Zimring, *Homicide in Chicago 1965–70*, in Senate Handgun Hearings, at 64–65; Raab, "Deliberate Slayings on Increase Here," *N.Y. Times*, Feb. 27, 1976 at 1.

55 *See, e.g.*, Conference of Mayors Project Report at 4 (Illustration 6); Edwards Commentary at 1336; Massachusetts Council Report at 3.

56 Conference of Mayors Project Report at 1–2; Massachusetts Council Report at 2.

57 *See*, Statement of Mayor Lindsay, Senate Handgun Hearings, at 169, 171.

58 *See*, Statement of Mr. Barnes, House Firearms Hearings, Vol. 4, at 1294; Statement of Mr. Stonebraker, Senate Handgun Hearings, at 219.

59 *See*, Statement of Mr. Lowery, House Firearms Hearings, Vol. 3, at 1148; Statement of Mr. Compton, *Id.*, Vol. 2, at 764; Remarks of Rep. Collins, *Id.*, Vol. 2, at 486. See also Edwards Commentary at 1335.

60 Zimring, *Is Gun Control Likely to Reduce Violent Killings*, 35 U. Chi. L. Rev. 721, 722 (1968); Comment, 51 J. of Urban L. 491, 505 (1974); *See*, Statement of Mr. Borden, House Firearms Hearings, Vol. 3, at 969–70.

61 *See*, Statement of Representative Mikva, House Firearms Hearings, Vol. 1, at 8; Zimring, Firearms & Federal Law at 148.

62 Statement of Mr. Rockford, House Firearms Hearings, Vol. 1, at 131.

63 Report of the Commission on Law Enforcement and Administration of Justice, at 240 (1967), cited in National Violence Commission Staff Report, at 151–152. A more recent summary was made by the U.S. Conference of Mayors. *See*, Conference of Mayors Project Report at 29.

64 Statement of Commissioner Murphy, Senate Handgun Hearings, at 175.

65 Statement of Chief of Detectives Seedman, Senate Handgun Hearings, at 181. The statement was made in 1971. There may well be closer to 1,000,000 illegal guns

in New York City today. *See*, Remarks of Sen. Hruska, Senate Handgun Hearings, at 246.

[66] ATF, Briefing Paper on Project "I," 16 City Consolidated Report, at 4 (1975) [Hereinafter "ATF Project I"]. *See also* Comment, 51 J. of Urban L. 491, 513 (1974).

[67] New York Penal Law § 400.00.

[68] Michigan Comp. Laws Title 28.

[69] Massachusetts Gen. Laws Ch. 140.

[70] Philadelphia Code § 10–814.

[71] *See*, Conference of Mayors Project Report at 29; Massachusetts Council Report at 7.

[72] California Penal Code § 12076.

[73] Washington Rev. Code Title 9, § 9.41.090.

[74] Miami Code § 61–2.

[75] New Orleans Code § 67–11.

[76] Pennsylvania Stats. Title 18, § 6111.

[77] Minneapolis Code § 877.070.

[78] *See generally*, Conference of Mayors Project Report at 29; ATF, Published Ordinances Firearms, 39 Fed. Reg. No. 91 (May 9, 1974).

[79] *See*, Zimring, Firearms & Federal Law at 175, 184, 191.

[80] *See*, *Id.* at 174 (Figure 3). Zimring suggests that the rate at which new guns enter the market has a special impact on the rate of handgun violence. *Id.* at 173, 196.

[81] ATF Project I, at 7.

[82] *See*, Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 387–89. Zimring estimates 500,000 violations of the Gun Control Act of 1968 each year. Zimring, Firearms & Federal Law at 161. The ease with which that law can be violated was set forth in the Senate hearings. *See*, Statement of Chief of Detectives Seedman, Senate Handgun Hearings, at 179–80. In one recent year 85% of all handgun homicides in Detroit were committed with unregistered guns. *See*, Statement of Mr. Walker, House Firearms Hearings, Vol. 3, at 973.

[83] *See, e.g.*, National Advisory Commission of Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, at 141 (1973). In 1968, the U.S. gun homicide rate was 221 times as high as Japan's. Since then our rate has nearly doubled. *See*, Massachusetts Council Report at 5.

[84] *See*, National Violence Commission Staff Report at 125; Edwards Commentary at 1337; Statement of Messrs. Burden & Dill, House Firearms Hearings, Vol. 3, at 975.

[85] *See*, National Violence Commission Staff Report at 119; Conference of Mayors Project Report at 21–22. The firearms homicide rates in other countries are generally 5% to 10% of the rate in the U.S., and the number of gun deaths per year in the U.S. exceeds the total for all other free nations. *See*, Massachusetts Council Report at 6.

[86] *See*, Zimring, Firearms & Federal Law at 176–81, and Figures 4–9. The increase in handgun homicide as a percentage of all homicide in urban areas is substantially larger than the increase nationally. *See*, *Id.* at 179–181, and Figure 8.

[87] Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 301.

[88] For example, firearm homicide rates continue to increase in jurisdictions that enact controls. *See* Hardy & Stompoly, *supra* note 11, at 82–87.

[89] We support, of course, exemptions for the possession of handguns by police, the military, and private licensed guards. A further exception to permit bona fide collectors to own non-functioning guns would also be consistent with the spirit of our recommendations.

[90] ATF Project I, at 7; ATF Project I Wash. D.C., at 7. Saturday night specials are defined as costing under $50.00, having less than a 3" barrel, and being .32 calibre or less.

[91] ATF Project I, at 6–7. *See also,* Conference of Mayors Project Report at 13.

[92] *See,* Statement of Mr. Walker, House Firearms Hearings, Vol. 3, at 966.

[93] A .38 calibre revolver may be twice as deadly as a .22. *See, Gun Abuse in Ohio,* in House Firearms Hearings, Vol. 4, at 1525, 1621.

[94] *See,* Edwards Commentary at 1341.

[95] For example, the Southern states have the highest rate of gun ownership, the highest percentage of homicide by gun, and the highest accident rate by gun causing death. *See,* Conference of Mayors Project Report at 1, II, 2; Massachusetts Council Report at 8. The presence of a gun in the home leads to more accidental or intra-family shootings. *See, e.g.,* 1975 Cong. Quarterly 798.

[96] *See,* Statement of Dr. Pasternack, House Firearms Hearings, Vol. 1, at 213; Edwards Commentary at 1341.

[97] *See,* Statement of Mr. Washington, House Firearms Hearings, Vol. 3, at 931.

[98] *E.g.,* Statement of Sen. McClure, House Firearms Hearings, Vol. 1, at 92–93; Statement of Mr. Schrank, *Id.,* Vol. 2, at 775; 1975 Cong. Quarterly 799.

[99] *See, e.g.,* Statement of Mr. Glassen, House Firearms Hearings, Vol. 3, at 1113 ("Taking firearms from responsible people gives further license to the criminal element to maim, rob, and rape the American Public.")

[100] *See,* Cawelti, *Myths of Violence in American Popular Culture,* in House Firearms Hearings, Vol. 2, at 838–842.

[101] *See,* Massachusetts Council Report at 10; Edwards Commentary at 1336–37; Comment 51 J. of Urban L. 491, 497–98 (1974). *See generally,* Conference of Mayors Project Report at 6–8.

[102] *See,* Statement of Dr. Wilt, House Firearms Hearings, Vol. 3, at 1023; *Gun Abuse in Ohio,* in House Firearms Hearings, Vol. 4, at 1521, 1568–69.

[103] *See, Attica,* The Official Report of the New York State Special Commission on Attica, at 354, 365 (1972).

[104] One member of the Committee, while strongly supporting in principle the total ban on possession of handguns, believes that such legislation is not likely to be enacted, and would create great problems in enforcement. *See generally,* the discussion between Mr. Lowey and Representative Conyers, House Firearms Hearings, Vol. 3, at 1151–53. This member supports a ban on manufacture or importation, with a bounty for voluntary surrender, but without an attempt to confiscate all existing handguns. This is essentially the position taken by Representative Mikva in H.R. 3675.

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GUN CONTROL LEGISLATION IN THE 97TH CONGRESS

By The Committee on Federal Legislation

INTRODUCTION

In 1976, greatly distressed by a substantial increase in gun-related crimes and by the senseless loss of human life caused by handguns, this Committee issued a report[1] which strongly advocated legislation to amend the federal Gun Control Act of 1968.[2]

In our 1976 report, this Committee endorsed an outright prohibition on the private ownership of handguns. We proposed a ban on any transfers of handguns and an escheat of handguns to the government on the death of each present owner. In the event that a prohibition on private ownership was determined to be unworkable, or perhaps "not possible of attainment," we supported alternative legislation barring all further importation, manufacture, and sale of handguns and their parts, as well as registration of all existing handguns limited to the life of the present owner.[3] Regrettably, no such legislation has been adopted, although the incidence of handgun-related crime and homicide by handguns has increased, notwithstanding the Gun Control Act of 1968.

Since 1976, evidence of the need for more effective gun control has continued to mount. The Committee's 1976 report cited statistics showing that 10,323 Americans had been killed by handguns in 1973.[4] Roughly the same number of people have been killed by handguns in each year since then.[5] Thus, since 1976, over 50,000 Americans have been killed by handguns.[6] In 1979, more than a decade after enactment of the Gun Control Act, 10,000 Americans were killed by handguns;

250,000 were wounded by gunshots during the course of felonies committed against them.[7] Far stricter measures are clearly necessary to prevent the wanton killing which results from the excessive availability of handguns.

In the last year or two, prominent Washington physician Michael Halberstam, former Representative Allard Lowenstein, and composer John Lennon have been killed by handguns fired at close range by assailants each of whom had a record of committing violent crimes or a history of mental disorder. Two assassination attempts involving handguns were made on Gerald Ford while he was President of the United States. An attempt with a handgun which came perilously close to succeeding was made on President Reagan on March 30, 1981. And these are only the most visible acts of violence.

Some sixty million handguns are now in circulation in the United States, with that number increasing by 2-1/2 million annually.[8] It has been estimated that by the year 2000, there will be 100 million handguns in America.[9] Clearly, more than the Gun Control Act of 1968 is necessary to reduce accessibility of handguns to lawless, violent elements of our society.

In Part I of this report, we review the Gun Control Act of 1968 and briefly review current proposals to amend it. In Part II we examine recent developments in the courts that update the constitutional analysis contained in our 1976 report. Part III contains a more detailed discussion of the legislation pending in the 97th Congress, especially S. 1030,[10] the McClure bill, and S. 974 and H.R. 3200,[11] the Kennedy-Rodino bill, and a discussion of the proposals for handgun control recommended by the Attorney General's Task Force on Violent Crime.[12] Our conclusion, elaborated in Part IV, is

that an outright prohibition on the private ownership of handguns is still warranted, but if such legislation banning handguns is not adopted the most stringent controls on the distribution of handguns should be adopted forthwith; of the regulatory schemes that have been suggested up to the present, the Committee strongly disapproves the McClure bill and favors the approach embodied in the Kennedy-Rodino bill and the Task Force Report.

I. THE GUN CONTROL ACT OF 1968 AND PROPOSALS FOR CHANGE

The Gun Control Act of 1968[13] was enacted with the stated purpose of providing support to local law enforcement officials in their fight against crime, but also specifies that it is not intended to impose undue restrictions on law-abiding citizens with respect to the acquisition, possession or use of firearms for recreational or other purposes. It seeks to achieve these seemingly conflicting ends by two principal means: first, by eliminating the interstate transport of firearms and ammunition, except between federally licensed dealers;[14] and second, by eliminating the importation of guns that, by their design and operation, are not suitable for sporting purposes.[15]

Section 922 of the Act makes it unlawful for any person to engage in the business of importing, manufacturing or dealing in firearms without having a federal license;[16] it then prohibits a federally licensed dealer from transferring firearms to any individual who the dealer knows or believes to reside outside his state, except another licensed dealer.[17] Additionally, all sales or deliveries of firearms and ammunition by licensed dealers in violation of state or local law are barred.[18] The Act also restricts the legal sale of firearms to persons over the age of eighteen or

twenty-one, depending upon the type of weapon,[19] and prohibits all traffic in stolen firearms and ammunition.[20]

Under section 922 of the Act, it is unlawful for a licensed dealer to sell any firearm or ammunition to persons who are under indictment or have been convicted of crimes, are fugitives from justice, are unlawful users of marijuana or narcotics, or have been adjudicated mental defectives or incompetents.[21] Section 922 also makes it unlawful for any such persons to receive or transport firearms or ammunition.[22] Section 923, which contains the provisions for obtaining licenses, provides that licensed importers, manufacturers, dealers, and collectors of firearms shall prepare and maintain such records concerning the transfer or other disposition of weapons and ammunition as the Secretary of the Treasury may prescribe[23] and current practice is that only the 170,000 handgun dealers in the United States are required to keep such records.[24] The making of any false or fictitious statement, or the furnishing of any false or misrepresented identification, in order to induce the sale or transfer of a weapon is unlawful under section 922.[25] Under section 924, violations of the Gun Control Act are punishable by fine or imprisonment or both.

Section 925(d) of the Gun Control Act of 1968 permits firearms or ammunition to be imported into the United States only if certain criteria (the most important of which is that a weapon be "recognized as particularly suitable for or readily adaptable to sporting purposes") are established to the satisfaction of the Secretary of the Treasury. While many fully assembled handguns cannot lawfully be imported into the United States under this provision, the statute has not been interpreted to ban importation of the parts from

which such handguns are assembled. Accordingly, while inexpensive, foreign-made "Saturday Night Specials" can no longer lawfully be shipped directly into this country, the parts for such guns can be imported and assembled domestically.

The Gun Control Act of 1968 has many weaknesses and deficiencies as a tool for reducing the danger to life posed by the indiscriminate availability of handguns and for assisting law enforcement officers in apprehending those who unlawfully use handguns in the commission of crime. Most significantly, it does not reduce the overall size of the existing gun population, and it does not regulate hand-to-hand or street sales of privately owned handguns. In addition, the prohibition against importation of handguns which are not suitable for sporting purposes does not bar the importation of foreign-manufactured parts and their subsequent assembly in the United States. Moreover, while the sale of handguns to people with criminal records, fugitives and narcotics users is barred, no adequate procedure exists to verify the identities of gun purchasers to determine if they belong in these categories. Also, while current practice requires dealers to keep records of sales, the fact that these records are spread among 170,000 dealers would seem to render the records virtually useless to law enforcement officers. Furthermore, there is no requirement that the loss or theft of a handgun be reported which clearly would be helpful to law enforcement officials. Finally, whatever benefits may have derived from strict controls in particular states and localities have been substantially nullified by the increasing traffic in handguns coming from jurisdictions having no controls, or lax controls at best.

These deficiencies, and the controversy that surrounds any attempt at gun control, have not abated since the original Act was passed in 1968. On one side, organizations

such as The National Rifle Association, Citizens Committee for the Right to Keep and Bear Arms, and Gun Owners of America oppose all efforts to limit gun use and continue to lobby for the weakening of existing gun laws. With the opposite viewpoint, organizations such as Handgun Control Inc. and the Coalition to Ban Handguns press for a ban on the sale, manufacture, distribution, and private possession of certain handguns. Although the National Rifle Association is by far the oldest and best financed of these lobbying organizations,[26] all of these groups are politically active and highly visible.

The shooting of President Reagan on March 30, 1981 renewed interest in curbing the use of handguns in violent crime and spurred the introduction of a number of bills to amend the Gun Control Act of 1968. Most of the recently introduced bills seek to deter use of handguns by imposing harsh penalties, in particular mandatory minimum sentences, whenever federal crimes are committed with a firearm.[27] However, one of the bills directed at discouraging the use of handguns by imposing harsh minimum sentences, S. 1030 introduced by Senator James McClure, also purports to protect the "rights" of handgun owners, largely by rescinding the provisions of the existing Act.[28]

The problem of curbing the use of handguns in violent crime is addressed in a more direct and comprehensive manner in the Handgun Crime Control Act of 1981, a bill introduced in the Senate by Senator Edward M. Kennedy as S. 974 and in the House by Representative Peter W. Rodino, Jr. as H.R. 3200.[29] While the Kennedy-Rodino bill provides for mandatory minimum sentences, it also seeks (1) to close the "loopholes" in the Act which prevent importation of certain handguns which are not suitable for sporting purposes -- including the inexpensive and easily concealable handguns

known as "Saturday Night Specials" -- but which do not prevent importation and assembly of the parts from which these handguns are made; (2) to prohibit the transfer of any handgun, whether by a dealer or a private person, unless the transferor obtains documentation that the prospective transferee is not ineligible to own a handgun under current law and also transmits the documentation through a licensed dealer to law enforcement officers for verification; (3) to provide a mandatory waiting period during which law enforcement authorities may check, on the basis of the documentation supplied by the transferor, to determine whether a prospective purchaser is a person prohibited by the Act from owning a handgun; (4) to make the limited number of manufacturers or importers of handguns the central repositories of records of subsequent transfers of the handguns they manufacture; and (5) to require the mandatory reporting of handguns which are lost or stolen. The Kennedy-Rodino bill also seeks to strengthen enforcement of the Act by transferring jurisdiction for enforcement from the Bureau of Alcohol and Tobacco of the Treasury Department to the Department of Justice, by prohibiting pawnshops from selling handguns, and by prohibiting dealers from selling more than two handguns to any non-dealer in any one year.

Apart from the pending legislation, a need for making the Gun Control Act of 1968 a more effective instrument for the control of handguns was recognized in the report released last August by the Attorney General's Task Force on Violent Crime.[30] Citing the appalling nationwide statistics of death and violence associated with handguns,[31] and pointing to the lack of effective State and local enforcement,[32] the Task Force recommended certain "politically feasible" amendments which would increase the effectiveness of existing

legislation of handguns. The Task Force recommendations include mandatory minimum prison sentences for the use of a firearm in the commission of a federal felony,[33] mandatory reporting of loss or theft of handguns to facilitate tracing,[34] imposition of a waiting period before a gun may be purchased to permit authorities to determine whether a prospective handgun purchaser is prohibited by existing federal law from owning a handgun,[35] a ban on importation and assembly of the parts of handguns which are not suitable for sporting purposes and the importation of which is now banned,[36] and study of the feasibility of establishing a national registry of firearms violators.[37] In general, the Task Force recommendations are similar to many of the provisions of the Kennedy-Rodino bill, but even of the Task Force's rather limited, "politically feasible" proposals, only the recommendation for mandatory minimum sentences has won the support of the White House, the remainder still being under study.[38]

II. GUN CONTROL AND THE CONSTITUTION

This Committee in its 1976 report concluded, first, that there was no constitutional right to possession of handguns under the Second Amendment, and second, that Congress could proscribe manufacture, importation, sale and even possession of handguns under the Commerce Clause as long as proper Congressional findings are made that possession of handguns as a class of activity has an effect on interstate commerce.[39] Research has not revealed any change in either of these constitutional principles. If anything, the cases decided since the 1976 report have only confirmed the breadth of Congress' power to regulate in this area.

A. Second Amendment

The Second Amendment provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The Committee noted in 1976 that

> courts over a long period of time have consistently given the amendment a very narrow construction. The Second Amendment as so interpreted places no restrictions on Congress' ability to regulate handguns.[40]

In United States v. Miller,[41] a case involving interstate shipment of a sawed-off shotgun, the Supreme Court held that Congress could regulate firearms in the absence of evidence of a conflict between the regulation and the preservation or efficiency of the state militia. Reviewing the post-Miller federal decisions, the Committee concluded in 1976 that:

> federal courts after Miller have read the decision as requiring a showing that the challenged legislation actually interfered with the state militia. Under this standard, Second Amendment challenges to federal gun control legislation uniformly have been rejected.[42]

In the last five years the federal courts have continued to reject challenges to federal gun control statutes based on the individual's supposed right to bear arms as guaranteed by the Second Amendment.[43] In Lewis v. United States,[44] Chief Justice Burger, in dictum, cited the Miller case with approval, noting that legislative restrictions on the use of firearms do not "trench upon any constitutionally protected liberties."[45] The lower courts are in accord, speaking of "the established principle that there is no absolute constitutional right of an individual to possess a firearm" of any type,[46] let alone a handgun. Accordingly, the Second Amendment does not appear to place any restrictions on Congress' power under the Commerce Clause to regulate or even proscribe private ownership of handguns.

B. Commerce Clause

Congress' power to regulate handguns derives principally from the Commerce Clause. When interpreting existing gun control legislation, the courts have given Congress broad authority to regulate, sustaining convictions for even wholly intrastate activities such as receipt or possession of a handgun by a convicted felon on the basis of the "minimal nexus" requirement articulated by the Supreme Court in Scarborough v. United States[47] in 1977: that is, that the firearm has been in interstate commerce at some time.[48] There is little doubt that record-keeping and waiting period provisions such as those recommended by the Attorney General's Task Force or contained in the Kennedy-Rodino bill are well within Congress' authority under the Commerce Clause. As stated by a federal court of appeals in one case,

> Congress could have prohibited the transfer of firearms altogether. Instead, it chose to permit transfer subject to well-defined regulation.[49]

While Congress clearly has a broad power to regulate such traditional aspects of interstate commerce as the importation, manufacture and sale of dangerous articles such as handguns, and while this power includes the authority to exclude the articles from interstate commerce,[50] the courts have never confronted the question whether this power also includes the power to prohibit possession of handguns. The Omnibus Crime Control and Safe Streets Act presently includes provisions that ban possession of firearms by certain persons such as convicted felons, illegal aliens and mental incompetents.[51] In United States v. Bass,[52] the Supreme Court avoided the constitutional question whether Congress could prohibit strictly intrastate receipt or possession by such persons under the Commerce Clause by interpreting ambiguous

wording in the existing statute to require proof in each case of some nexus with interstate commerce. Subsequently, in the Scarborough case,[53] it was held that the the required nexus was satisifed by a connection with interstate commerce that is quite remote -- proof only that a firearm has been at some point in its existence in interstate commerce.

Congress may, however, possess the power to dispense with proof of any nexus whatever in a particular transaction. In Perez v. United States,[54] a case decided shortly before Bass, the Supreme Court sustained a conviction under the federal loan-sharking statute despite the absence of proof of any connection between the defendant's particular conduct and interstate commerce. Congress had made detailed findings that local loan-sharking activities had an aggregate effect on interstate commerce, and the Court, citing ample "gruesome and stirring episodes"[55] in support of this finding, concluded that Congress could proscribe the activity of loan-sharking in general, without a nexus with interstate commerce having to be established in every case.

The same rationale would support legislation to ban possession of handguns or, as the Kennedy-Rodino bill proposes, to require a person who transfers a handgun to another in an intrastate transaction to obtain a certification that a licensed dealer has completed the required inquiries and documentation as to the eligibility of the transferee to have the handgun[56], provided proper findings were made of the aggregate effect of possession of handguns on interstate commerce. As Justices Blackmun and Burger suggested in dissent in Bass,[57] ample support for such findings should exist because of the aggregate effect of individual possession of handguns in stimulating demand for their manufacture, importation and sale.[58]

Moreover, the existence of handguns and their use in violent crimes have an effect on legitimate interstate business as "gruesome and stirring" as that which supported federal regulation of loan-sharking in the Perez case.[59]

The Scarborough decision suggests that such an approach would find favor with the Supreme Court. Although acknowledging that the legislative history was sparse, the Court in Scarborough paid considerable deference to Congressional findings about the aggregate effect of handgun possession by criminal elements on interstate commerce, in reading the existing legislation to require proof only of a minimal, almost hypertechnical, nexus with interstate commerce.[60] Similar findings about the aggregate effects of handgun violence on interstate commerce would presumably support a ban on possession -- and a fortiori on transfer -- of all or specified types of handguns. Precisely this rationale of an aggregate effect on interstate commerce is being relied on by the lower federal courts to sustain convictions under the federal narcotics law for purely intrastate possession and sale of controlled substances.[61]

Accordingly, there would appear to be a sound constitutional basis for Congress to enact legislation not only regulating but proscribing the importation, manufacture, sale, and possession of all handguns. The same constitutional basis would support legislation, like the Kennedy-Rodino proposal, regulating the transfer of all handguns and barring only some.

III. PENDING LEGISLATIVE AND JUSTICE DEPARTMENT PROPOSALS

As we noted above, a number of proposals that address the subject of firearms were introduced in the 97th Congress in the weeks immediately following the shooting of

President Reagan. The majority of these bills are not "gun control" measures in the strict sense of that term, since they make no attempt to reduce the proliferation of handguns or other firearms. Rather, they are focused upon increased or mandatory penalties for the use of a firearm in the commission of a crime.[62]

Other proposals more closely reflect the traditional concept of "gun control," combining mandatory penalties with restrictions upon the importation, sale, interstate transport, and distribution of guns not suitable for sporting purposes.[63] The latter approach has been substantially paralleled in the recommendations of the Attorney General's Task Force on Violent Crime,[64] issued on August 17, 1981, which were developed independently of any proposed legislation.

A. The Legislative Alternatives

Among the many bills[65] that adopt the mandatory sentencing approach as a means of stemming handgun violence is S. 909, sponsored by Senate Judiciary Committee Chairman Strom Thurmond. S. 909 would amend the penalties section of the Gun Control Act[66] in several respects, the most significant of which is the removal of judicial discretion on the sentencing of offenders who carry or use a firearm in the commission of a felony.

Under present law, for any first offense involving the carrying or use of a firearm during the commission of a federal felony, an additional term of imprisonment for between one year and ten years may either be imposed by the court or suspended in the court's discretion.[67] For a second or subsequent offense the court may impose a term of imprisonment for betweeen two and twenty-five years and may not suspend the sentence or give a probationary sentence.[68]

S. 909 removes the discretion of the court to order a suspended sentence for first offenders, while retaining the court's authority to determine the length of the required prison term.[69] In these respects, S. 909 is typical of the proposals that follow the sentencing approach. All of the bills prohibit courts from directing that the portion of the sentence for using or carrying a gun in the commission of a federal felony be served concurrently with the sentence for the felony offense, as does present law.[70] S. 909 is silent on the possibility of parole upon conviction and sentencing for the gun portion of the offense, as is current law.[71] Other versions of the sentencing approach address this point by precluding any authority for parole prior to the completion of the minimum prison term,[72] and several of the bills propose differing minimum and maximum sentences, usually distinguishing between first and subsequent offenders.[73]

A second major bill that adopts the sentencing approach is S. 1030, introduced by Senator James McClure on behalf of himself and 32 other senators. In most respects, S. 1030 is anything but a "gun control" bill. The very purpose of S. 1030, "[t]o protect firearms owners' constitutional rights, civil liberties, and rights to privacy," anticipates the substance of the bill and signals the proposed substantial evisceration of the Gun Control Act of 1968 that follows.

Encompassing some 20 pages, S. 1030 would effect a complete overhaul of the Gun Control Act of 1968 and most of the assumptions on which it was based. The bill is prefaced by proposed legislative findings that: (1) The public's Second, Fourth, Fifth, Ninth, and Tenth Amendment rights have been infringed under existing firearms statutes; (2) the agencies charged with enforcement of the existing laws have violated

the federal Privacy Act;[74] and (3) the intent of Congress in enacting the Gun Control Act "has been thwarted by these enforcement practices which are aimed at harassing, burdening, and harming those law-abiding citizens who choose to own and use firearms for legitimate purposes."[75] As noted above,[76] the rights which the McClure bill finds to have been infringed are rights which the courts have held to be non-existent as far as ownership of firearms is concerned. In ~~either~~ Justice Blackmun's ~~Burger's~~ words, existing gun control statutes "do not trench upon any constitutional liberties."[77]

Many other provisions of S. 1030 raise serious constitutional and public policy issues. First, it would permit either the House or the Senate to veto all new administrative gun control regulations. The concept of such a legislative veto has been considered by this Committee in the recent past,[78] with the conclusion that it is both unwise and possibly unconstitutional.

Second, S. 1030 contains a provision that would make the Treasury Secretary's licensing determinations, which are now subject to judicial review only for the authority of the Secretary to deny or revoke a license, subject to de novo review and would allow the party challenging such determinations to introduce evidence not offered below in judicial review proceedings. We see no reason to make this change and fear that doing so would impose unwarranted additional burdens on the enforcement of gun control legislation.

Third, S. 1030 would include for the first time in the Gun Control Act a provision that would make the federal government liable for attorneys fees. Under S. 1030, fees could be awarded to a party other than the government in any action or proceeding under the statute in which the govern-

ment is determined ultimately to have acted without foundation or, in the case of a successful action to recover firearms or ammunition seized by the government, even in circumstances when the government had a foundation for the seizure and acted in good faith. We believe this would be very unwise as it would surely discourage officials from vigorously enforcing a law which we believe is especially important to the public safety.

Finally, S. 1030 would establish a new standard of federal preemption which would negate any state law that regulates any aspect of the transportation of unloaded firearms. It goes without saying that such a provision could well undermine the protective features of existing state laws addressing the gun control problem and, to this extent, would be worse than no additional federal legislation at all.

While we will leave further discussion of the details of how S. 1030 would dismantle the Gun Control Act of 1968 to a footnote,[79] it is important to note that S. 1030 does contain mandatory sentencing provisons that are quite severe. The bill requires a one-to-ten year sentence for a first conviction and five-to-twenty-five year term for second and subsequent offenses, and absolutely precludes the possibility of parole. This provision is clearly intended as a deterrent to the use of handguns by persons otherwise committing crimes. In substantially all other respects, however, S. 1030 broadens the rights of firearm owners and dealers to distribute, possess and use handguns and thus increases their availability and the likelihood of their use for the commission of violent crimes.

Quite opposite from the tone and direction of S. 1030 is the approach embodied in the Kennedy-Rodino proposal, S. 974 and H.R. 3200.[80] Like S. 1030, the Kennedy-Rodino

proposals -- titled the "Handgun Crime Control Act of 1981" -- would implement substantial changes in the Gun Control Act of 1968. There the similarity ends. S. 974 and H.R. 3200 propose new rules that would, at the very least, impede the unrestricted acquisition and transportation of handguns by individuals.

S. 974 and H.R. 3200 would substantially reduce the manufacture and distribution of handguns and other guns not suitable for sporting purposes. First, not only would the manufacture, sale, and importation of inexpensive and easily concealable handguns not suitable for sporting purposes be prohibited, but their assembly would be prohibited also.[81] As already noted, the Gun Control Act of 1968 banned the importation of such weapons insofar as they are not suitable for sporting purposes, but did not restrict the importation and subsequent domestic assembly of parts for such firearms. As a result, a great many foreign parts were brought into the United States, assembled domestically, and then sold in full compliance with federal law, while the same weapons could not legally have been imported in assembled form.

S. 974 and H.R. 3200 would close this loophole in current law by adding a new subsection of section 922 of the Gun Control Act providing that

> It shall be unlawful for any licensed manufacturer, licensed importer, licensed dealer, or licensed collector to manufacture, assemble, sell, deliver, or transfer any handgun, other than a curio or relic, in the United States unless the handgun model has been approved by the Attorney General under section 930 of this title.[82]

Section 930 would be a new provision of the Act that would permit the manufacture, assembly, importation, sale, or transfer of only those handgun models deemed by the Attorney General after evaluation and testing to be "generally recog-

nized as particularly suitable for or readily adaptable to sporting purposes."[83] Consequently, it would no longer be lawful to assemble any guns not on the Attorney General's list of approved models, even if the parts were available.[84]

Second, S. 974 and H.R. 3200 would create new provisions for the Gun Control Act of 1968 which would prohibit the transfer of any handgun, whether the transferor is a licensed dealer or a private individual, unless the transferor obtains from the transferee a certificate on a form prescribed by the Attorney General, containing information showing the transferee's eligibility to purchase the handgun.[85] Thus, the new provisions would substantially broaden the applicability of the Gun Control Act of 1968 by requiring even private persons in intrastate transfers of handguns to comply with procedures intended to keep handguns out of the hands of dangerous persons.[86]

Third, the Kennedy-Rodino bill would impose a 21-day waiting, or "cooling off," period before the purchase of a handgun would be permitted unless the prospective purchaser is already licensed to have a handgun under an approved state licensing system. As we noted above, current federal law prohibits the sale of weapons to convicted felons, persons who are mental defectives or incompetent, and drug addicts,[87] but existing procedures afford no effective method to verify a purchaser's eligibility before a sale is consummated. Under the proposed legislation someone who does not have a valid permit issued pursuant to a state law approved by the Attorney General as meeting certain standards could purchase a gun only 21 days after appearing personally to purchase a gun and submitting to a records check by the Federal Bureau of Investigation and the chief law enforcement official in the place of

his residence.[88] In addition to giving time for law enforcement officials to check whether the purchaser is eligible, this "cooling off" period might reduce the use of handguns for crimes of passion (but, regrettably, only for persons who do not already have permits).

Fourth, S. 974 and H.R. 3200 would require each licensed importer, manufacturer and dealer to keep detailed records of each disposition of a gun, including identities of transferors and transferees, and would require each licensed dealer monthly to transfer its records of such transfers to the importer or manufacturer whose service number appears on the gun.[89] While these changes might have no immediate impact in reducing gun-related crimes, they would surely enable law enforcement officials more readily to trace any weapons that are used in the commission of a crime since the number of places at which to check records would be manageable.

Under other provisions of S. 974 and H.R. 3200, all losses or thefts of handguns would be required to be reported to law enforcement authorities, and the failure to report the theft or loss of a handgun that is later determined to have been used in the commission of a felony would result in the imposition of a fine against the original owner[90] or the possibility of civil liability.[91] Yet another provision would prohibit an individual from purchasing or receiving more than two handguns in a single year without first obtaining the approval of the Attorney General.[92]

Further provisions of S. 974 and H.R. 3200 would prohibit pawnshops from selling handguns, in part by prohibiting pawnbrokers from obtaining handgun dealer licenses.[93] Handguns are believed to be readily available from this source.

It has been noted that the weapon used to shoot President Reagan was purchased at a pawnshop.[94]

S. 974 and H.R. 3200, like S. 909 and S. 1030, provide for an additional mandatory minimum sentence of two years for a first offense involving the use of a handgun and five years for second and subsequent offenses and, as under S. 909 and S. 1030, the court's discretion to suspend the prison term would be abolished.[95] However, S. 974 and H.R. 3200 contain a compromise between the S. 909 and S. 1030 proposals on the subject of parole. As noted previously, S. 909 is silent on the possibility of parole in cases where firearms are used in the commission of a crime, while S. 1030 precludes the possibility of parole for convictions under the Act. S. 974 and H.R. 3200 generally remove the defendant's eligibility for parole until at least the minimum prison sentence has been served, but do provide some latitude if the court finds that, at the time of the offense, (1) the defendant was under 18 years of age; (2) the defendant was under unusual duress; (3) his mental capacity was significantly impaired; or (4) the defendant was an accomplice of some principal actor, and his participation in committing the offense was "relatively minor."[96]

Finally, S. 974 and H.R. 3200 contemplate a change in the administration of law enforcement functions under the Gun Control Act; law enforcement functions would be transferred from the Treasury Department to the Justice Department.[97] In a written statement issued at the time S. 974 was introduced, Senator Kennedy observed that the Treasury Department is the taxation arm of the federal government, while the Justice Department is the law enforcement arm, and said, "Control of handgun crime is the proper responsibility of the law

enforcement arm of the government."[98] In this last respect, the Reagan Administration might be presumed to support the approach -- though not necessarily the reasoning -- of S. 974 and H.R. 3200 since the Administration's budget cuts include elimination of the agency currently responsible for monitoring compliance with the Gun Control Act, the Treasury Department's Bureau of Alcohol, Tobacco and Firearms.[99]

B. The Attorney General's Task Force Recommendations

The recommendations of the Attorney General's Task Force on Violent Crime are similar to some of the proposals contained in S. 974 and H.R. 3200, but include some additions as well. Appointed on April 10, 1981, the Task Force consisted of eight individuals and an executive director, whose assigned task was "to make specific recommendations to the Attorney General on ways in which the federal government could do more to combat violent crime."[100] The Task Force heard testimony by nearly 80 witnesses in seven cities and considered written testimony provided by thousands of federal, state and local criminal justice practitioners, scholars and members of the public.[101]

The work of the Task Force was conducted in two phases, the first of which was completed on June 17, 1981 and consisted of 15 recommendations that the Justice Department immediately could implement within its existing substantive and jurisdictional framework. The second phase of the Task Force's work "focused on changes in federal criminal statutes, funding levels, and resources that would increase the federal government's impact on violent crime."[102] On August 17, 1981, the Task Force presented 49 Phase II recommendations to the Attorney General, six of which related specifically to controls on firearms.

The Phase I recommendations contain one proposal that pertains to firearms. Recommendation 5 provides that the Federal Bureau of Investigation "examine the feasibility of a separate registry of firearms violators."[103] As described in the Commentary to the recommendation, such a separate registry could serve a number of beneficial purposes. First, the Secret Service would be able to ascertain quite readily which persons in an area the President planned to visit had a record of firearms violations. Second, law enforcement officers, in the routine performance of their duties, could determine in the same way they now check for outstanding warrants and for stolen property whether the subject had a history of violent offenses with firearms. Presumably, this knowledge would encourage the officers to exercise special caution in dealing with the individual. Finally, offenders with firearm violation records could be identified more rapidly than is now possible for arrest, bail, charging, arraignment, and judicial processing.[104]

The Phase II recommendations of the Task Force contain six proposals that address the issue of handgun control. Recommendation 18 provides, in two subparts, that the Gun Control Act of 1968 should be amended to require individuals to report the theft or loss of a handgun to their local law enforcement agency, and also that a waiting period be required for the purchase of a handgun.[105] The purpose of the waiting period would be "to allow for a mandatory records check to ensure that the purchaser is not in one of the categories of persons who are proscribed by existing federal law from possessing a handgun."[106]

Recommendation 19 of the Task Force Report addresses the existing loophole in federal law that concerns the importa-

tion of certain categories of handguns. The Report proposes that the Gun Control Act of 1968 be amended "to prohibit the importation of unassembled parts of handguns which would be prohibited if assembled."[107]

Recommendation 20 notes that semi-automatic weapons are not currently regulated by federal law to the same degree as are fully automatic weapons, but that many semi-automatic firearms can be easily converted into fully automatic weapons. The Report proposes that these kinds of semi-automatic weapons be subject to the same existing regulations as fully automatic weapons.[108]

Recommendation 21 provides that the Attorney General should direct the United States Attorneys "to develop agreements with state and local prosecutors for increased federal prosecutions of convicted felons apprehended in the possession of a firearm."[109] Noting that penalties under various federal statutes tend to be more strict than state penalties applicable to firearms possession, the Report explains that the purpose sought to be achieved by Recommendation 21 is to initiate prosecutions wherever appropriate, "in order to bring federal prosecutorial resources and more severe penalties to bear on the most serious offenders in a locality who are apprehended with firearms in their possession."[110]

Recommendation 22 proposes that the National Institute of Justice establish, "as a high priority, research and development of methods of detecting and apprehending persons unlawfully carrying guns."[111]

IV. RECOMMENDATIONS FOR THE 97TH CONGRESS

Neither the Kennedy-Rodino proposal in S. 974 and H.R. 3200 nor the Task Force Report adopts a solution as

extensive as the proposals which were supported to varying degrees in our 1976 report. This Committee concluded in 1976 that the proliferation of handguns was an intolerable burden on our society to which there is only one truly responsible, effective approach -- a ban on manufacture, importation, sale and private possession of handguns:

> We believe that the contribution of handguns to the current increase in homicide and other violent crimes requires immediate and comprehensive action. In our opinion, the continued existence of an unwarranted supply of handguns is an underlying factor in the decline of our major urban centers. This Committee does not find any substantial justification for the continued widespread public possession of handguns, and, accordingly, we strongly endorse the legislative proposals calling for a prohibition on the manufacture, importation, sale, and private possession of handguns. Whether or not our recommendations are politically feasible at this moment in time, we are of the firmly held conviction that a complete ban on handguns should be the ultimate objective of any new federal gun control legislation. 112

Notwithstanding our adherence to the position we took in 1976 and our disappointment that a complete ban on handguns has virtually no support in Congress, we are encouraged by the Task Force Recommendations which, if adopted, would be an important first step in staving the present unfettered proliferation of handguns. While it is not presently clear which, if any, of the Task Force recommendations the Reagan Administration will support (other than mandatory minimum sentences), it is apparent that the legislative mechanism for many of the Task Force's suggested improvements is already in place in the form of the proposals contained in S. 974 and H.R. 3200. As a means toward beginning the crucial but slow process of true handgun control, this Committee favors adoption of the Task Force-Kennedy-Rodino approach. As we indicated in our 1976 Report, we do not believe that an approach like the Task Force-Kennedy-Rodino

approach is sufficient to achieve the ultimate objective of ending the proliferation of illegal handguns. However, it would provide significant assistance in limiting the violence we suffer as a result of the excessive and indiscriminate availability of handguns in our country.

We urge that the Congress reject the proposals in S. 1030. S. 1030 seeks to legislate in the opposite direction from S. 974 and H.R. 3200. It would restrict the ability of federal authorities to regulate ownership, sale and manufacture of handguns and would make it more difficult to trace weapons and handgun offenders. This Committee opposes S. 1030 because the spirit and letter of its provisions encourage the distribution of handguns, and we do not favor any proposed legislation that would either facilitate the transportation of handguns in interstate commerce, or ease the existing restrictions upon the possession of such weapons by individuals.

We also recommend against the approach of S. 909 and similar bills which do little more than propose harsh and mandatory sentences. Legislation which focuses exclusively upon the imposition of prison sentences is not sufficient by itself to reduce significantly the use of handguns in the commission of criminal and anti-social acts. As this Committee wrote in 1976,[113] such a formula for "gun control" is inadequate because it deals with the symptom of crime rather than the cause, and because the possibility of longer or mandatory criminal sentences affecting the gun crime rate is less likely to be effective than restricting and monitoring the private possession of handguns.

We note, however, that the imposition of harsher sentences and mandatory minimum sentences -- the approach

apparently favored by President Reagan[114] -- enjoys widespread support in Congress. We concur in the view that Congress should approve more stringent penalties for the commission of crimes involving handguns, but only in the context of broad remedial legislation such as that proposed in the Kennedy-Rodino and Task Force proposals.

The majority of this Committee does not support the concept of mandatory prison terms in all handgun cases. The Committee opposes the mandatory sentencing approach because we believe that any legislation which absolutely removes the discretion of the sentencing judge in all cases is unwise. We believe that the courts should be encouraged to take a firm position on the sentencing of handgun offenders, but that the availability of judicial discretion should be retained where the interest of justice warrants. We are unaware of any inadequacy in the performance of federal judges in this regard.

This Committee strongly supports the philosophy of requiring each transferor of handguns, including private individuals in intrastate transactions, to participate in the effort and take responsibility for assuring that prospective purchasers are not among the dangerous or irresponsible classes of persons who are ineligible for handguns under current law. Accordingly, we endorse the provisions of the Kennedy-Rodino bill which require all transferors to obtain documentation of eligibility from prospective transferees, which require all such documentation to be forwarded to law enforcement officials for verification, and which require 21 days to elapse from the date verification is requested before the handgun can be transferred.

In addition to providing time to check the eligi-

bility of the prospective purchaser, we think the provision for a 21-day waiting period prior to consummating the purchase of a firearm might truly provide a "cooling-off" period for a person under emotional stress who might otherwise use the weapon to do immediate violence. Accordingly, we recommend that a waiting period apply to all prospective purchasers, even to those who can rapidly establish eligibility by displaying a valid gun permit. We note that the Task Force's proposal for a national registry of firearms violators, a proposal we endorse, would make the waiting period to check credentials more meaningful.

We enthusiastically support proposals to close loopholes in federal law, so that foreign-manufactured handgun parts are not protected by virtue of their domestic assembly and so that handguns which are not suitable for sporting purposes, including "Saturday Night Specials," are unlawful to assemble, sell or transfer. In addition, we fully concur with the proposed inhibition on law-abiding citizens purchasing more than two handguns in any given year (without permission of the Attorney General) and with proposals requiring handgun owners to report the theft or loss of handguns they own at the peril of being subject to fines and possible civil liability if they fail to do so and their handguns are subsequently used in a felony.

In our view, the Kennedy-Rodino bill is correct in its assumption that the primary responsibility for "gun control" should reside with the Justice Department, which possesses the unique experience and expertise to perform this vital law enforcement function. We think that the record keeping requirements of the Kennedy-Rodino bill, which would require importers, manufacturers and dealers to keep records

of the initial and subsequent sales of handguns, and for dealers monthly to transmit their records to the importer or manufacturer whose serial number appears on the handgun, would ultimately prove to be of great assistance to the Justice Department in preventing violent crime and in apprehending and prosecuting offenders.

In this Committee's view, a combination of these regulations with a mandate for the courts to mete out more stringent penalties when crimes are committed with handguns must be the foundation of any serious proposal on gun control, and it remains the basis for the legislative package which this Committee believes can be enacted in the 97th Congress.

V. CONCLUSION

In 1976, this Committee acknowledged that even the most extreme measures, involving a complete ban on the private ownership of handguns, would not prevent all criminal acts that involved the use of a firearm. We are no less cognizant of that fact today, but likewise we are no less convinced that the need for handgun regulation is both urgent and immediate. If anything, our views have been strengthened by the hundreds of thousands of firearms offenses that have been committed since our last Report was released, and particularly by the several well-publicized handgun crimes that have occurred within the last year or two. We urge the 97th Congress to follow the recommendations that this Committee first submitted nearly six years ago, recommendations that we reiterate today. In the alternative, we urge the Congress to enact S. 974 and H.R. 3200, modified as we have suggested, and to

enact comprehensive gun control legislation at the earliest practicable date.

December 8, 1981

Respectfully submitted,

COMMITTEE ON FEDERAL LEGISLATION

JACK DAVID, Chair

Michael A. Bamberger	James B. Kobak, Jr.
Jeffrey A. Barist	Ellen H. Kramer
Marshall Beil	Edward Labaton
Diane S. Blank	M. David Lacher
John C. Boger	Gail Merel
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Alan R. Friedman	Myra Schubin
Gary D. Friedman	Robert S. Smith
Jeffrey Glekel	Michael K. Young
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FOOTNOTES

1. The Committee on Federal Legislation, Gun Control Legislation, 31 The Record of the Association of the Bar of the City of New York 271 (1976) [hereinafter cited as 1976 Report].
2. 18 U.S.C. §§ 921-28 (1976).
3. 1976 Report, supra note 1, at 282-84.
4. Id. at 278.
5. See 127 Cong. Rec. S3806 (daily ed. Apr. 9, 1981) (remarks of Sen. Kennedy).
6. Id.
7. Id.
8. Id.
9. Id.

10. S. 1030, 97th Cong., 1st Sess. (1981).

11. S. 974, H.R. 3200, 97th Cong., 1st Sess. (1981).

12. U.S. Dep't of Justice, Attorney General's Task Force on Violent Crime: Final Report (Aug. 17, 1981) [hereinafter cited as Task Force Report].

13. 18 U.S.C. §§ 921-28 (1976).

14. Id. § 922(a).

15. Id. §§ 922(1), 925(d).

16. Id. § 922(a).

17. Id. § 922(a)(5), (b)(3).

18. Id. § 922(b)(2).

19. Id. § 922(b)(1).

20. Id. § 922(i), (j).

21. Id. § 922(d).

22. Id. § 922(g), (h).

23. Id. § 923(g).

24. 127 Cong. Rec. S3808 (daily ed. Apr. 9, 1981) (remarks of Sen. Kennedy).

25. 18 U.S.C. § 922(a)(6), (m) (1976).

26. See [1981] Cong. Q. Weekly Reps. 802 (May 9).

27. E.g., S. 494, S. 903, S. 904, S. 972, S. 1030, S. 1045, and S. 1185, 97th Cong., 1st Sess. (1981).

28. S. 1030, 97th Cong., 1st Sess. (1981).

29. S. 974, H.R. 3200, 97th Cong., 1st Sess. (1981).

30. Task Force Report, supra note 12.

31. Id. at 30, Commentary.

32. Id.

33. Id. at 29, Recommendation 17.

34. Id., Recommendation 18.

35. Id.

36. Id., Recommendation 19.

37. Id. at 13, Recommendation 5.

38. Raines, Reagan Proposes Revision of Laws to Combat Crime, N.Y. Times, Sept. 29, 1981, § A, at 1, col. 6.

39. 1976 Report, supra note 1, at 273-77.

40. Id. at 274.

41. 307 U.S. 174 (1939).

42. 1976 Report, supra note 1, at 275.

43. United States v. Oakes, 564 F.2d 384, 387 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978); United States v. Turcotte, 558 F.2d 893, 895 (8th Cir. 1977); United States v. Houston, 547 F.2d 104, 107 (9th Cir. 1976); United States v. Birmley, 529 F.2d 103, 107 (6th Cir. 1976). See also United States v. King, 532 F.2d 505 (5th Cir.)(finding Second Amendment inapplicable to conviction for sale of firearms without a license), cert. denied, 429 U.S. 960 (1976).

In most cases, the courts dispose of the Second Amendment issue in cursory fashion or in a footnote. United States v. Turcotte, supra; United States v. Houston, supra. However, in the Oakes case, the Tenth Circuit treated the defendant's argument in greater depth. In Oakes, the defendant, a resident of Kansas, was convicted for knowing possession of an unregistered machine gun, in violation of 26 U.S.C. § 5861(d). The defendant argued that, according to the Constitution of the State of Kansas, all able-bodied male citizens between the ages of twenty-one and forty-five were members of the state militia, and therefore that he came within the scope of the Second Amendment. The court rejected this argument, explaining that "[t]o apply the amendment so as to guarantee appellant's right to keep an unregistered firearm which has not been shown to have any connection to the militia, merely because he is technically a member of the Kansas militia, would be unjustifiable in terms of either logic or policy." 564 F.2d at 387.

Opponents of gun control legislation have argued that the Second Amendment protects the right to keep and bear arms not only as an incident to maintaining a State militia but also to protect the collective right of the people to act as an unorganized "people's militia" which would serve as a bulwark against oppression by either foreign invaders or domestic governments. Caplan, Restoring the Balance: The Second Amendment Revisited, 5 Fordham Urb. L.J. 31 (1976). This theory has been rejected by courts and commentators alike, see, e.g., Note, The Right to Keep and Bear Arms, 26 Drake L. Rev. 423, 439 (1976-1977); 1976 Report, supra note 1, at 274-76 & authorities cited at nn. 15-20, and seems impossible to reconcile with the Second Amendment's reference to a "well regulated Militia."

44. 445 U.S. 55 (1980).

45. Id. at 65 n.8.

46. United States v. Swinton, 521 F.2d 1255, 1259 (10th Cir. 1975), cert. denied, 424 U.S. 918 (1976). See also Adams v. Williams, 407 U.S. 143, 150-51 (1972) (Douglas, J., dissenting).

47. 431 U.S. 563 (1977).

48. Id. at 575, 577; accord, United States v. Perkins, 633 F.2d 856 (8th Cir. 1981); United States v. Kilburn, 596 F.2d 928 (10th Cir. 1978), cert. denied, 440 U.S. 966 (1979); United States v. Garrett, 583 F.2d 1381 (5th Cir. 1978); United States v. Robbins, 579 F.2d 1151 (9th Cir. 1978); United States v. Gardner, 564 F.2d 799 (8th Cir. 1977); United States v. Haddad, 558 F.2d 968 (9th Cir. 1977); United States v. Birmley, 529 F.2d 103 (6th Cir. 1976); United States v. Agnes, 453 F. Supp. 1256 (E.D. Pa. 1978), aff'd without opinion, 601 F.2d 576 (3d Cir.), cert. denied, 444 U.S. 933 (1979); United States v. Panetta, 436 F. Supp. 114 (E.D. Pa. 1977), aff'd without opinion, 568 F.2d 771 (3d Cir. 1978). See also United States v. Grossman, 608 F.2d 534, 537 (4th Cir. 1979) (sustaining conviction under 18 U.S.C. § 371, which prohibits malicious damage or destruction by explosive device, where hydraulic elevator destroyed by explosive device had once been transported in interstate commerce).

49. United States v. Birmley, 529 F.2d 103, 106 (6th Cir. 1976).

50. Id.; United States v. Weatherford, 471 F.2d 47, 51-52 (7th Cir. 1972), cert. denied, 411 U.S. 972 (1973); Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582, 584 (D.D.C. 1971) (sustaining ban on cigarette advertising over electronic communications media against First Amendment challenge).

51. 18 U.S.C. App. § 1202 (1976).

52. 404 U.S. 336 (1971).

53. 431 U.S. 563 (1977). See text at notes 47-48 supra.

54. 402 U.S. 146 (1971).

55. Id. at 149.

56. S. 974, H.R. 3200, 97th Cong., 1st Sess. (1981). This is set forth in a proposed new section 929 which would be entitled "Transfer of handguns."

57. 404 U.S. 336, 353-56 (1971) (Blackmun, J., dissenting).

58. This rationale has a long and distinguished ancestry, ultimately deriving from Wickard v. Filburn, 317 U.S. 111 (1942) through Katzenbach v. McClung, 379 U.S. 294 (1964).

59. See United States v. Sweet, 548 F.2d 198, 202 (7th Cir.) (impact of intrastate use of explosives on interstate commerce), cert. denied, 430 U.S. 969 (1977).

60. 431 U.S. 563, 567, 572 (1977).

61. United States v. Montes-Zarate, 552 F.2d 1330, 1331 (9th Cir. 1977), cert. denied, 435 U.S 947 (1978); United States v. Atkinson, 513 F.2d 38, 39-40 (4th Cir.

1975). The same analysis has been applied to sustain legislation prohibiting the conduct of a gambling business, even when conducted wholly within a state. United States v. Leon, 534 F.2d 667, 673-74 (6th Cir. 1976); United States v. Morrison, 531 F.2d 1089, 1093 (1st Cir.), cert. denied, 429 U.S. 837 (1976).

62. E.g., S. 494, S. 903, S. 904, S. 909, S. 972, S. 1030, S. 1045, and S. 1185, 97th Cong., 1st Sess. (1981).

63. E.g., S. 974, H.R. 3200, 97th Cong., 1st Sess. (1981) (identical bills).

64. Task Force Report, supra note 12.

65. See note 62 supra.

66. See 18 U.S.C. § 924(c) (1976), as amended by Pub. L. No. 91-644, 84 Stat. 1889 (1971).

67. Id.

68. Id.

69. S. 909, 97th Cong., 1st Sess. (1981), at subsection (c). S. 1045, which would regulate sentencing by adding new provisions of federal law without amending the Gun Control Act of 1968, would not preclude suspended sentences for first offenders.

70. 18 U.S.C. § 924(c) (1976).

71. Id.

72. See, e.g., S. 494, S. 1030, 97th Cong., 1st Sess. (1981).

73. E.g., S. 494, which provides for a prison term of five to ten years for first offenders and ten years to life for second and subsequent convictions; S. 903, which provides for mandatory fixed five-year and ten-year sentences for first and second offenses, respectively, and a term of fifteen years to life imprisonment for third and subsequent offenses; S. 1045, which provides for a fixed but not mandatory two-year sentence for a first offense and a two-to-five year mandatory term for second and subsequent convictions; and S. 1030, which would make mandatory the present sentence of one-to-ten years for a first offense, and would increase the sentence for second and subsequent convictions to five-to-twenty-five years.

Probationary sentences and suspended sentences are now expressly permitted as a matter of the general authority of the federal courts in 18 U.S.C. § 3651 (1976). One of the bills, S. 972, would amend this section, as well as section 924(c) of the Gun Control Act of 1968, to provide consistent law eliminating the court's discretion to suspend sentences of firearms offenders.

74. 5 U.S.C. § 552(a) (1976).

75. Preamble to S. 1030, 97th Cong., 1st Sess. (1981).

76. See text at notes 40-46 supra.

77. Lewis v. United States, 445 U.S. 55, 65 n.8 (1980).

78. The Committee on Federal Legislation, The Legislative Veto, 34 The Record of the Association of the Bar of the City of New York 208 (1979).

79. The bill would delete the present restrictions on dealing in ammunition from coverage under the Act and would sharply restrict access of the Secretary of the Treasury to any such records as the Secretary of the Treasury requires licensed manufacturers, importers, and dealers to maintain pursuant to the Act. S. 1030 at §§ 101, 103. Section 102 of the bill would eliminate the current prohibition against sales of handguns by licensed dealers to individuals who reside outside the state in which the dealer's place of business is located.

In addition, section 103(d) of S. 1030 would permit revocation of dealers' licences only in cases of "willful" violations of the Gun Control Act. Under current law, revocation of any license is permitted "if the holder of such license has violated any provision of [the Act] or any rule or regulation prescribed by the Secretary under [the Act]. 18 U.S.C. § 923(e) (1976).

The bill, in section 104(a), would make penalties for violating the Gun Control Act applicable only to "willful" violators and not to all violators, and section 104(c) would relax the provisions for forfeiture of firearms and ammunition seized by the government as part of an enforcement proceeding. Section 105 of the McClure bill would remove the bulk of the Treasury Secretary's existing discretion to decide whether to grant relief from restrictions affecting possession or transportation of firearms, and would also limit the Secretary's discretion in deciding whether to permit importation of firearms into the United States.

80. 97th Cong., 1st Sess. (1981).

81. S. 974, H.R. 3200, 97th Cong., 1st Sess. §§ 102, 105 (1981).

82. Id. § 102(i).

83. Id. § 105(a).

84. Id.

85. Id. § 103.

86. The new section provides that, if an individual is in lawful possession of a permit issued under an approved state law, he or she may purchase or receive a handgun in any state, as long as such purchase or receipt will not violate any state or local law applicable at the place of transfer, and as long as the following additional conditions specified in section 103 are satisfied: where the transferor is licensed under the Gun Control Act, the transferee must appear in person at the business premises of the licensee, who must verify the current validity of the permit and the identity of the transferee,

and who must stamp the permit indicating the date of transfer or purchase. If the transferor is a private individual or otherwise is not required to be licensed under the Act, then the transferee holding the permit must supply to the transferor a certificate obtained from a local law enforcement agency or a licensed handgun dealer, which attests to the current validity of the permit. Upon completion of the transfer in this instance, the transferor must report the transfer to a licensed dealer on a form to be provided by the Attorney General, and that dealer must retain a record of the transfer.

The proposed new section also has procedures to be used where the prospective transferee does not have a valid permit. In this instance, the following conditions apply: (1) the transferee must appear in person at the business premises of a licensed dealer in handguns; (2) the transferee must submit a sworn statement to the dealer, on a form prescribed by the Attorney General, which states the transferee's name and residence, the title, name, and address of the chief law enforcement officer of the place of the transferee's residence, the transferee's assurance that his receipt, purchase, or possession of the handgun will not violate any law, and his assurance that he will not make an illegal transfer of the handgun; and (3) the transferee must satisfactorily establish his identity and residence. The dealer must immediately by registered or certified mail, return receipt requested, forward copies of the sworn statement to the FBI and to the chief law enforcement officer at the transferee's place of residence, for the purpose of confirming the eligibility of the transferee to receive the weapon. Only after 21 days have elapsed from mailing and no negative information has been received can the final transfer of the handgun take place. Current federal law provides for only a seven-day waiting period, and does not require that the transferee lacking a permit appear personally at the business premises of a licensed dealer. 18 U.S.C. § 922(c) (1976).

The proposed new section depends for its effectiveness in part on an efficient state system for issuing and monitoring handgun permits. Where a state permit law exists, section 103 provides in substance that it is to be reviewed by the Attorney General, who will consider whether (1) the procedures for issuance of the permit provide an adequate opportunity to determine the identity and eligibility of the applicant; (2) it is readily ascertainable that the individual possessing the permit is the individual to whom it was originally issued; (3) there are adequate provisions for cancellation of the permit if the permit holder should become ineligible to retain it; and (4) the state provides mandatory penalties for alteration of the permit, and for carrying a handgun without a permit. If the Attorney General finds that the permit law of a state meets these standards, permit holders will receive special treatment in purchasing handguns.

87. 18 U.S.C. § 922(d)(1976).

88. S. 974, H.R. 3200, 97th Cong., 1st Sess. § 103 (1981).

89. Id. § 104(j).

90. Id. §§ 102(n), 106(b)(2).

91. Id. § 106(d).

92. Id. § 102(n).

93. Id. §§ 102(i), 103, 104(e).

94. Morgenthau, Morgenthau's Good, Bad News About Criminal Justice System, N.Y.L.J., April 10, 1981, at 1, col. 3, at 3, col. 2.

95. S. 974, H.R. 3200, 97th Cong., 1st Sess. § 106(c)(1981).

96. Id.

97. Id. § 201.

98. 127 Cong. Rec. S3808 (daily ed. Apr. 9, 1981) (remarks of Sen. Kennedy).

99. See Gailey, White House Planning to Kill Firearms Enforcement Unit, N.Y. Times, Sept. 19, 1981, § A, at 1, col. 4.

100. Preface to Task Force Report, supra note 12. The Task Force was co-chaired by former Attorney General Griffin Bell and Illinois Governor James Thompson. The other members of the Task Force included James Q. Wilson, professor of government at Harvard University; David L. Armstrong, President of the National District Attorneys Association; Frank G. Carrington, Executive Director of the Crime Victims Legal Advocacy Institute; Robert L. Edwards, Director of the Division of Local Law Enforcement Assistance of the Florida Department of Law Enforcement; William L. Hart, Police Chief of Detroit; and Wilbur F. Littlefield, Public Defender for Los Angeles County. The Executive Director of the Task Force was Jeffrey Harris, formerly on the staff of Attorney General Edward Levi and a former Assistant United States Attorney for the Southern District of New York.

101. Id. at vi.

102. Id. at v.

103. Id. at 13, Recommendation 5.

104. Id., Commentary.

105. Id. at 29, Recommendation 18.

106. Id. See also id., Commentary, at 30-31. The Commentary points out that drug addicts, felons, and mental defectives -- the categories of individuals proscribed from owning handguns -- "are not the best risk for 'the honor system.'" The Task Force suggested that a waiting period might reduce the opportunities for obtaining weapons through the device of false affidavits, while

also deterring some of those who might purchase and use a handgun in the heat of passion.

107. Id. at 29, Recommendation 19.

108. Id., Recommendation 20; id. at 32, Commentary.

109. Id. at 30, Recommendation 21.

110. Id. The Commentary suggests that in addition to the more stringent criminal sanctions associated with federal firearms violations, the punishment for such violations might be imposed more quickly in those federal districts having less congested court dockets than corresponding county and city court calendars. Id. at 32.

111. Id. at 30, Recommendation 22. The Commentary discusses the need for such methods of detection and apprehension of firearms violators, but provides no further guidance on how these objectives might be accomplished consistently with the Fourth Amendment, other than to suggest that the National Institute of Justice engage in research and development. Id. at 33.

112. 1976 Report, supra note 1, at 271.

113. Id. at 283-84.

114. See King, Reagan Favors a Gun Law Rated as Mixed Success, N.Y. Times, June 17, 1981, § A, at 28, col. 1; Raines, Reagan Proposes Revision of Laws to Combat Crime, id., Sept. 29, 1981, § A, at 1, col. 6.

THE FIREARMS OWNER PROTECTION ACT

MONDAY, FEBRUARY 8, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:15 a.m., in room 2228, Dirksen Senate Office Building, Hon. Charles E. Grassley (acting chairman of the committee) presiding.

Staff present: John Maxwell, chief counsel and staff director; and Lynda Nersesian, counsel, both of Agency Administration Subcommittee.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY [acting chairman]. Today marks the third and final day of hearings on S. 1030, the Firearms Owners Protection Act, better known as the McClure-Volkmer bill.

Among the witnesses who have testified in strong support of this bill have been the prime sponsors, Senator McClure and Representative Volkmer. Their testimony emphasized the generic history of abuses under the Gun Control Act of 1968, which has had the ultimate effect of creating a crime from intrinsically innocent acts and thus a whole class of criminals from an innocent body of citizenry.

It seems that the original broad commands of the act have put law enforcement authorities in the awkward position of interpreting the law rather than devoting their attention to carrying out the law. We heard from a number of citizen witnesses who had the misfortune of being caught in the middle of the interpreting process. These witnesses testified as to their encounters with the Bureau of Alcohol, Tobacco, and Firearms.

The stated purpose of the act in 1968 was to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence and not place any undue burdens upon law-abiding citizens. Nevertheless, I heard in the two previous meetings many examples of raids by agents of this Bureau during early morning hours for what appear to be, and have not been proved other than, bookkeeping errors.

The legislative history also indicated that the act is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes. Yet I heard testimony from witnesses that detailed what it is like to be treated as a felon for exercising what ought to be a constitutionally protected second amendment right.

Today we will hear from four witnesses, chiefly representing the law enforcement sector. I welcome our first witness, who is from my own State of Iowa, Kayne Robinson.

Kayne, do you have your wife and children with you?

Mr. ROBINSON. My wife is with me, Senator.

Senator GRASSLEY. Good to see you, Donna. I should say first, that Kayne is an old friend of mine.

You have to admit, Kayne, that this weather is surely a little bit easier for us than the weather that we have known back in Iowa this past winter. I got in from Iowa last night and will be going back this afternoon, as you know, because the President is coming to the State to address the State legislature.

As a way of introduction, Kayne Robinson has been in law enforcement for 13 years. He spent 4 years in the Marine Corps in Vietnam. Kayne is currently the Iowa State chairman of the Iowa Management Program for Apprehension of Criminals. He is chief firearms instructor for the Des Moines Police Department and a graduate of Drake University in Des Moines with a degree in criminal justice administration.

I am pleased to have your testimony and would ask you to proceed. To the extent your testimony would be longer than 10 minutes, I would appreciate it if you could summarize, so we could have time for questions.

STATEMENT OF LT. KAYNE ROBINSON, RESEARCH AND DEVELOPMENT DIVISION, DES MOINES POLICE DEPARTMENT, DES MOINES, IOWA

Lieutenant ROBINSON. Yes, sir. I appreciate the opportunity to speak with the committee on criminal justice issues affecting local police.

The specific issue of firearms has been, as it relates to police, grossly misrepresented, I believe. There have been frequent interviews of police executives that have created the false impression that police officers across this Nation are opposed to the private ownership of firearms.

If you look in depth at surveys of actual police officers and police organizations, you will find that police officers very strongly support the right of citizens of this country to own private firearms.

Some people have said that firearms laws would make the police job easier. Of course, the police job would be made easier if we did not have to get a search warrant to search a criminal's or anyone else's home, if we could wiretap indiscriminately, or we could jail people at offensive assemblies. It would be easier if all citizens had to wear a large number on their back like people who get a deer hunting license. The problem is that, if these things happened, we would have a police state in America like they have in Poland.

We police officers kind of resent the implication that we are not sensitive to the civil rights of Americans. Our oath is to support the Constitution of the United States, and that Constitution, I believe, still includes the second amendment.

I would like to examine very briefly the relationship between crime and firearms. I think everyone is pretty well aware that the

cities that have the most firearms restrictions are frequently found among the cities that have the highest violent crime rates.

If oppressive gun laws prevent crime and if firearms freedom, on the other hand, promotes crime, then we would expect Denver, Indianapolis, Phoenix, and Milwaukee, cities with few firearms restrictions, to have a very high violent crime rate, and that is not true; in fact, the reverse is true. Firearms do not create criminals any more than the ski mask manufacturer creates a robber, the automotive company creates a reckless driver, or the typewriter company creates a libelous newspaper article.

We found that it is unlikely that robbers are afraid of minor administrative laws. Think about that for a minute. A person who is going to go out and rob someone with a firearm, with a knife, or anything else—is that person really going to be concerned about a relatively minor administrative penalty or a minor penalty of a few years potential in prison? If they are going to rob someone or kill someone, the very premise is pretty shaky.

However, a bad law places millions of Americans—nearly half of the Nation owns firearms—in a position of violating that law, if we have an unreasonable firearms restriction. We know the history of that. We tried it with the Volstead Act, where we tried to ban alcohol. It was grossly unpopular. The result of it was to make millions and millions of Americans into criminals.

We have, in the last few years, heard many assertions that we do not have a constitutional right to keep and bear arms. As I recall, there were 12 amendments proposed to the original Constitution, 10 of which passed and were ratified by the States. The second amendment was one of them. The second amendment has been forgotten by some folks, as have the 9th and 10th.

I would urge you to consider that the history of the second amendment shows that specific attempts at limiting the second amendment to military matters and such matters were defeated. The amendment, when it was passed by the Senate and House of Representatives of the United States before being sent to the States, had a considerable record of these issues and these discussions made. The amendment was passed as it is, and attempts to limit it were specifically defeated.

Private firearms ownership will stand on its own. About half of America's households have firearms, and only a very, very tiny part of 1 percent of those firearms are ever used in crime. Millions of Americans use firearms for sporting use, and they do it very, very safely. Self-defense is another legitimate use. Millions of Americans own firearms for self-defense. Some of us feel that self-defense is a very fundamental right.

The police cannot protect you once you have been targeted for a crime. Once an individual has selected you as the victim of a rape, a robbery, or some other crime, the first the police officer will know about it is when you call him or when the person that finds your body calls. In those instances, only you can protect yourself.

The average citizen is capable of making a rational decision about whether they want to protect themselves, about whether they are capable of doing it; they are able to make decisions about driving cars and doing all other kinds of things in their lives that

are far more complicated than the decision to be made concerning self-defense.

It has been said that firearms are more dangerous in the self-defense sense to the owner than they are to the criminal. We should not let this stand. Actual police experience does not indicate that. In Des Moines we have had quite a number of instances of people defending themselves very successfully with firearms and a variety of other weapons.

We do not advocate that people go out and arm themselves. On the other hand, we do not tell them not to do it either. Everyone knows their own situation, and everyone has to understand that they have to act very responsibly if they are going to use a firearm or any other weapon to defend themselves, but that is their right, and it is not our right to take it away from them. There is a very good and responsible record by the citizens of Des Moines in using weapons to defend themselves responsibly.

We have to be a little aware of the enemies of the second amendment. They have been led in the past by such fine law-abiding Americans as Gov. Otto Kerner. These folks have not generally been found among the friends of police or the victims of crime. Their goals have been very specifically and articulately stated. It is the elimination of private firearms ownership.

They have made some very dangerous proposals--such things as putting metal detectors along footpaths, misusing product safety laws to cause cartridges to be declared illegal; they have used terminology that has misled the public; they have created terms like "Saturday night special." If you checked to see what they meant by "Saturday night special," you would see that they meant the large handgun that you see the guards around these buildings and the police officers in Washington, D.C., carrying on their uniform. That is the kind of gun that fits the definition of "Saturday night special" that they attempted to enact into law.

The people support the second amendment. In Iowa recently, the Iowa poll sponsored by the Register and Tribune showed that there is an increase in the support of the right of citizens to keep and bear arms.

Specifically, the law that is being discussed here today takes some steps to clean up some very confusing and bad law. It defines "engaging in business." That should be defined in the law; it should not be left to the bureaucrat to decide what is "engaging in business."

It allows the lawful sale or gift of a firearm from me to my brother who lives in Milwaukee, should I decide to do that, as long as that sale or gift does not violate either the laws of Iowa or Wisconsin. That seems to make good sense.

It will change the situation so that a hand loader will not be a criminal if he loads a few cartridges and gives them to someone else.

Intent to violate the law will be required. Some people say this is a terrible burden that no one can overcome, but in Iowa, and I think in most other States, intent is a key element of every criminal offense. We have to prove intent in a rape, in a murder, in a robbery, in a burglary, an embezzlement—for every crime, we have

to prove intent. This would not seem to be an unreasonable requirement to impose in enforcement of this Federal law.

It puts some restrictions on the seizure of guns. They do not seem unreasonable. The guns have to be specifically involved in some violation, and the violation has to be intentional, not a technical violation.

Routine inspections of dealers are going to be eliminated. I do not think we have the resources today to conduct routine inspections of anything. I hope we do not.

Mandatory minimum sentences are required for people who commit a Federal felony while carrying a firearm. I think experience shows that, if we are going to put someone behind bars for a serious and very dangerous crime, the only way that we are going to get that job done is with mandatory minimum sentences.

It provides for rule oversight by the Congress. When the bureaucrats create a rule, the Senate or the House of Representatives can see if that rule is reasonable and that rule follows the intent of their legislation. It seems to be a reasonable proposal.

The law retains the recordkeeping requirements and prohibition against felons owning firearms. I think it is a good step.

Senator GRASSLEY. Thank you for your testimony. I have some questions I would like to ask you. I also might say, for your benefit as well as any of the other witnesses today, that even though the other members of the committee are not here, you may expect, as occasionally happens, that some of the members have interest in submitting to you in writing questions that we would appreciate your written responses to.

Lieutenant ROBINSON. Absolutely.

Senator GRASSLEY. Kayne, in view of your practical experience with all aspects of both State and Federal laws as they apply to gun control, which laws, as they are currently on the books, contribute the most to the apprehension of criminals?

Lieutenant ROBINSON. The apprehension of criminals with regard to firearms laws is a pretty difficult situation. If someone commits a crime, you generally do not know which gun was involved until you have located the person who committed the crime. So the relationship of firearms laws to identifying the perpetrator is rather tenuous.

It is true that in some cases, once you have identified the perpetrator, tracing the firearm back to the factory and back to the individual can be of marginal use in spinning the mosaic of your case—in putting this case together—but it is only of marginal use in actually identifying the criminal.

Senator GRASSLEY. What you are really saying is that there are other Federal laws that are more important in the immediate investigation, that lead to the apprehension of criminals, as opposed to the gun laws?

Lieutenant ROBINSON. That is correct.

Senator GRASSLEY. OK. Recently I received a letter from an Iowa constituent that expressed his concern with some provision of S. 1030. He cited an incident in Iowa that took place in February of 1978. You may recall at that time three teenage boys and a bookstore proprietor were killed in downtown Des Moines—I should say murdered.

My constituent stated that it was his belief that the Federal firearms requirements were the indispensable link in the chain of arrests that led to the conviction of the murderer. Could you comment as to the particular case and whether this was a true assessment of the apprehension of the murderer?

Lieutenant ROBINSON. Yes, sir, I was aware of that question and did some review before I left, including talking to the commander of the homicide section that investigated that. That is not a correct assessment.

The case is rather lengthy. However, to briefly describe what happened, the individual was hanging around the downtown area of Des Moines. He had been released early from prison in Alabama, where he had committed a vicious robbery, where he cut a person's throat. He was allowed, because of very lax criminal law in that State apparently, to work in a filling station, I believe, from which he escaped. I do not know if that naturally follows or not, but that is what they said.

In any event, he was in downtown Des Moines and was involved in murdering four people. No one knew who he was. The investigators—State, local, and with some Federal investigators helping—put together a very, very complicated case that had little to do with the firearm. In fact, the gun that was probably used was never linked in court by ballistics evidence to these murders.

What happened was, through witnesses in the downtown area, they discovered who this person was or what he looked like. They traced him to his place of employment, still not knowing who the person was, and then tried what amounted to a very, very long shot.

They took some people who worked with the individual, because he had an accent indicating that he came from a certain part of the country and some other bits and pieces that they put together—they took some witnesses that worked with individual to prisons in a part of the country and went through State prisons looking at the release pictures.

Through very hard work and luck, they came up with this individual's picture. That is how the person was identified. He was not identified because of the firearm or anything like that.

The firearm was purchased, I would point out, in violation of Federal law. The law did not prevent him from purchasing the firearm; he simply lied to the individual that he bought the gun from.

He then murdered some people with the gun and sold the gun, after probably destroying the inside of the barrel. They were never able to get any ballistics evidence from the gun, comparing the gun and the bullets that were found at the murder scene. So it is not correct to say that the Federal firearms laws were the indispensable piece of evidence.

It is true that the gun was traced back to the factory and then from the factory back to the people in Des Moines that owned the gun—the last legal owner of the gun—but that person did not know to whom he sold the gun. The individual had given a false name, and that identification did not lead to his arrest.

Senator GRASSLEY. What Federal programs, if any, have particularly aided the State in the apprehension of criminals? And I do not mean just the State of Iowa but any particular State.

Lieutenant ROBINSON. I think some of the things that have been operated through the FBI, like the National Crime Information Center—NCIC—and things like that have been very, very helpful.

We have had an improving cooperation in the last few years between local police and the FBI, the Secret Service, and the U.S. Marshals Service. I think the exchange of information and the cooperation there have been very good, and that has been very helpful.

As you know, drugs are a serious problem. Some of the drug traffic is truly interstate. Since hardly any heroin is made in Iowa or hardly any totally illicit drugs, other than marihuana, are produced in the State of Iowa, many of the things that come into the State come in interstate commerce. So some of the laws pertaining to the interstate shipment of narcotics and laws in that area have been helpful in building cases.

Some of the training opportunities have been very useful at the FBI academy, Drug Enforment Administration academy, and other places.

Senator GRASSLEY. I would like to ask also what you feel we could do to increase our focus on the apprehension of the violent criminal.

Lieutenant ROBINSON. It is very difficult from a Federal standpoint because of the dichotomy between Federal and State law, but I think that if you make the serious decision that a certain crime is serious enough that you want to take that person off the street and not give them an opportunity to commit additional offenses for a certain period of time, the only effective way to do it is with mandatory sentences.

I wish there were another answer, but our experience in Iowa is that, for very, very serious offenses—rape, robbery, felonious assault—we send about half of the people convicted of those crimes to prison—only about half—and out of that half, the people—presumably the worst of the lot for those very serious offenses—serve about 20 percent of their sentence. This means we have them back out on the street almost immediately.

So it would seem that if we are going to effectively take the very worst of the lot—I do not advocate throwing the key away; I do not advocate throwing everyone in jail for car thefts or minor crimes of that type—I do say that if you have especially dangerous people, you make the decision that you want to do something about them, and mandatory sentences seem to be the only way to keep them locked up.

Senator GRASSLEY. I have a question from Senator Specter, who could not be here, not only for you but for any of the witnesses today. What are your thoughts on that provision of S. 1030 which contemplates concurrent rather than consecutive sentences for the use of a firearm during a Federal felony?

Lieutenant ROBINSON. Of course there is no such thing as a concurrent sentence. A concurrent sentence is rhetoric. It means that the person does not serve any additional time. If you get 10 years in prison for one crime and then you add another offense to it, and you get 10 years, and you serve them concurrently, you are serving them at exactly the same time, so you have added absolutely nothing to the offense.

Unfortunately, it's a fraud on the public, because the sentence that is announced by the court to the public and is printed in the newspaper is that this individual who has, say, in a Federal sense, committed a bank robbery, got 25 years for committing the bank robbery and got an additional 5 years for carrying a firearm and is going to serve those sentences concurrently. The public is led to believe that the sentence will be lengthened by the concurrent sentence, and it is not lengthened. I think there is no point in putting those kinds of things in the law.

Certainly it can be argued that, if a crime is actually the same act but happens to be written as a different crime—in stealing a car, you can commit several offenses sometimes. You can build some logic into having concurrent sentences in terms of the way you describe it, but the fact is, the person does not serve any additional time.

Senator GRASSLEY. It might be possible to remedy that in the legislation. Of course I would want to visit with the sponsors of the legislation first.

Could you tell me what proportion of the members of your organization or profession, at least those you know in Des Moines, would own guns and use them off duty for sporting purposes or family protection?

Lieutenant ROBINSON. A very high percentage. I would not know the precise percentage, but as the firearms instructor for the department, I have a lot of conversation with members of the department about other firearms and the methods that they use to train their family members and children in the safe use of firearms, in hunting uses, and other things. Based on that I would say it is very, very high.

Senator GRASSLEY. Do organizations that you represent have a position on mandatory sentencing for the use of a weapon in carrying out a crime?

Lieutenant ROBINSON. The answer to that is that we do not. I would say that organizations that I am not a member of, and not particularly speaking for, have generally taken a position in favor of mandatory sentences for some offenses. Use of a firearm is one of those things.

Senator GRASSLEY. Is there anything that maybe your testimony or my questioning missed that you would like to bring out before I go on to the next witness?

Lieutenant ROBINSON. Some of the national crime control measures that were proposed by the President, I think, have a lot of merit. As the Judiciary Committee is looking at these things, I hope they will receive some favorable consideration.

But I would caution that there is a tendency sometimes, when Federal help is offered, to create standards. This is a rather dangerous thing. We have experienced it over the years, and it comes and goes. Standards is a nice sounding term, which means control.

When a Federal agency sets standards for operation of an information system or record system—any kind of a system—that means that we then cannot make the decision at the local level how best to operate and how best to change and react in the operation of those systems. I would say that that is something that the committee ought to look at.

If legislation is passed with regard to prisons and such things, beware of allowing the bureaucrats to set standards that all 50 States will have to follow, because they are very, very difficult to change. Some of the proposals that I heard the President discuss included using surplus Federal property for additional prison space. This is needed in Iowa. We have a prison overcrowding problem, partially created by the Federal courts.

We would like to take our more dangerous offenders and lock them up for a little longer time, but we are having very serious difficulty in finding a place to put them. So that proposal probably has some merit.

The President discussed bail reform. Particularly on appeals, I think there is a need to take a look at bail. We are convicting people of very serious and dangerous crimes and then almost immediately releasing them on bail on an appeal bond, and an appeal may drag on for years, and years, and years.

Military assistance, I think, should be rather promising. We have a tremendous amount of drugs coming into the United States. It would seem to be an appropriate and useful exercise for the military to help, even if they have civilian authorities with them doing the actual law enforcement work, to help in interdicting the drug traffickers and perhaps some of the alien problems that we have in Florida and places like that.

There seems to be another serious implication that, if the dope traffic can flow back and forth across the borders of the United States as freely as it does, we wonder how secure our borders are from a military standpoint.

Mandatory prison terms for carrying a weapon in a Federal felony we have already discussed. I think that is a proposal with a great deal of merit. The President discussed improving cooperation among Federal agencies and local agencies. As I mentioned, I think the cooperation among those agencies that I discussed has been very good and has been improving. I think that is a very encouraging sign. Those are the things that I would hope the Congress would consider.

Senator GRASSLEY. I want to thank you, Kayne, for your testimony and for answering our questions, and encourage you to keep in touch with us and other members of the committee as well as your own Congressmen on the other side of the Hill, as we arrive at a conclusion on exactly what the wording of this legislation will be.

I would expect that, with the number of cosponsors that it has in the House and Senate, there will be action on this legislation before this Congress adjourns. Thank you once again.

Lieutenant ROBINSON. Thank you, Senator.

Senator GRASSLEY. At this time I would like to announce that the next witness, Vince McGoldrick, is ill, and of course cannot testify. So we are enclosing his statement in the record as if he were here to give it, without objection.

I also have a statement from Senator Robert Dole of Kansas, who is also a member of the Judiciary Committee. He is unable to be here at this hearing also. I will have that submitted for the record at this time, without objection.

[Prepared statements follow:]

STATEMENT OF VINCE McGOLDRICK,
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE
FRATERNAL ORDER OF POLICE

Mr. Chairman, my name is Vince McGoldrick and I speak on behalf of the Fraternal Order of Police. The Fraternal Order of Police is the oldest and largest police organization in the United States. Our membership presently consists of approximately 160,000 active or retired law enforcement personnel. I myself retired after 23 years of police service, both civilian and military.

As police officers, our members have a uniquely detailed view of crime and the criminal justice system. They are among that small part of the population obligated by the law and their oaths to move against a criminal act or public danger, rather than avoid it. As a result, police officers and their families bear a disproportionate part of the burden of criminal tragedy. In the form of deaths and injuries in the line of duty. In the past decade, 1,147 law enforcement officers have been murdered in the line of duty; last year alone, over 57,000 were assaulted.

With this burden, law enforcement officials have a unique responsibility. They are the front line of law enforcement. The legislature may enact laws, the judiciary may interpret them, but it is the police officer, deputy or agent on duty who must decide whether and how they should be applied to any particular case. If the law to be enforced is restricted and clear, and covers only acts society really wants punished in every case, the application is simple. But when the law is vague, or overbroad, or really intended to be applied only in exceptional cases, it is the individual officer who must make that decision. All too often, he or she must make it without any particular guidance.

As police, we therefore favor laws which are certain and clear, and define as concisely as possible those acts which policymakers really want punished. We support firm and sure punishment for those who violate such laws. For both these reasons, the Fraternal Order of Police strongly supports S. 1030, the McClure/Volkmer bill.

S. 1030 represents a series of amendments to current federal firearm laws, chiefly the Gun Control Act of 1968. The effect of the bulk of these amendments is to reform the Gun Control Act in ways that make it more rational, more clear, more narrowed and more precise — in a phrase, more enforceable.

Many aspects of the Gun Control Act, as it exists, are enforcement nightmares. The Act outlaws, and imposes felony penalties upon, a wide range of conduct in which ordinary, honest citizens regularly engage. Under it, a transfer of a firearm to a resident

of another state, in full compliance with all state laws, is a federal felony. To "engage in the business of dealing" in guns without a license is a felony -- yet no section of the law tells enforcing agents just what Congress meant by that phrase. To distribute ammunition to others without a manufacturers' license is a felony, although we may suppose that the law's drafters did not intend the arrest of the millions or tens of millions of law-abiding citizens who have done just that. The agent or officer who must enforce such requirements is left completely at sea when it comes to knowing just what enforcement was really intended, and sometimes even just what is legal or illegal.

Even where the commands of the law are clear, they are often irrational. A licensed dealer cannot, of course, sell to a convicted felon. A private citizen, who is guilty of a felony if he sells to a resident of another state, can sell to a convicted felon. One section defines five classes of people who cannot receive firearms; another defines four classes who cannot possess them. Yet, only two of those classes overlap (felons and former mental cases) and even these are defined differently in each of the two sections! The terms of the Gun Control Act are thus not only overbroad and vague, but also they are sometimes even inconsistent, arbitrary and capricious. A person charged with enforcing the law, whose decisions must be made in the field and not in a legislative hearing room, deserves better descriptions of what conduct you desire stopped and punished.

S. 1030 goes far to remedy these problems. It creates a precise definition of prohibited firearm owners, and this definition applies uniformly to private and to dealer sales, to receipt, transportation and ownership of firearms. It defines "engaged in the business", and makes it clear that Congress desires "willful" violators, and not those who accidentally transgress with innocent intent, to be arrested and prosecuted. Enforcement of the law is accordingly made less burdensome and more certain. The Fraternal Order of Police strongly supports these improvements in the enforceability of the Gun Control Act.

We also support S. 1030's efforts to increase penalties for criminal misuse of a firearm. The Gun Control Act is primarily a regulatory statute. It is not used to prosecute a murderer, rapist, or robber as such. Instead, it permits prosecutions of those who violate regulatory measures (licensing, recordkeeping, interstate sales) in the hopes that this might indirectly hinder the actual criminal. The major exception to this arrangement is found in section 924(c) of the Act, which imposes stiffer punishments upon anyone who uses or carries a firearm in commission of a federal felony. The chief

problem is that the additional penalty is not a mandatory penalty -- that is, the offender can receive probation or parole without limitation -- unless it is a second conviction under that specific section. Since, to the best of my knowledge, no one has ever been twice convicted under 924(c), a judge who desires to give a violent federal offender probation can simply give him the additional term with probation or suspended sentence.

S. 1030 changes this, imposing a mandatory sentence -- no probation, parole, work furlough or any other form of release -- for use of a firearm in a federal crime against the person. The Fraternal Order of Police strongly endorses this proposal. Indeed, we as police have a personal stake in laws of this type. Studies of murders of police conducted by the Federal Bureau of Investigation have shown that for nearly three-quarters of such killers this was not their first offense. 39% had received probation or other similar leniency from the judicial system. No less that 25% were on probation or parole for past offenses when they murdered the police officer. While we as law enforcement personnel are the most exposed to the recidivist, we are not the only ones at risk. An LEAA study of convicted robbers found that most were career criminals who began their criminal acts by age 14; they averaged over two prior felony imprisonments, before beginning their current robbery term. The Fraternal Order of Police therefore strongly endorses laws such as S. 1030, which seek to incarcerate serious offenders.

The Fraternal Order of Police thus considers S. 1030 to be a vast improvement over the Gun Control Act as it now exists. It clarifies, tightens and makes rational the all too often vague and inconsistent provisions of that Act. We therefore support it from our standpoint as law enforcement professionals. And we also support it as individuals. Many if not most of our members are themselves firearms owners in private life. We enjoy the safe and legitimate uses of firearms for sport and collecting and we support their necessary use for self-defense. On-duty police, who form a small part of one percent of the population, cannot be everywhere at everytime, particularly when the criminal has the advantage of picking the time and place of the offense. As firearms owners as well as law enforcement professionals, we support S. 1030's move to reorient the federal firearm laws away from the legitimate users of firearms and toward stiffer punishment for the criminal.

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OPENING STATEMENT OF SENATOR BOB DOLE

GUN CONTROL HEARINGS

MR. CHAIRMAN, AT THE OUTSET, I WANT TO COMMEND YOU FOR YOUR COURAGE IN HOLDING THESE HEARINGS. THE SUBJECT OF GUN CONTROL LEGISLATION HAS BEEN EMOTIONALLY CHARGED AND HIGHLY CONTROVERSIAL OVER A LONG PERIOD OF TIME. LITERALLY THOUSANDS OF POLITICAL CAREERS HAVE BEEN LAUNCHED AND TERMINATED IN THE SWIRLING CONTROVERSY AROUND THIS ISSUE. IT IS A BRAVE POLITICIAN INDEED WHO WOULD KNOWINGLY WALK INTO THE MIDST OF THIS FIRESTORM.

AS CONTROVERSIAL AS IT IS, THE SUBJECT OF GUN CONTROL LEGISLATION IS ALSO A VITAL ISSUE AFFECTING OUR CRIMINAL JUSTICE SYSTEM AS WELL AS OUR CITIZENS WHO INCREASINGLY LIVE IN THE SHADOW OF CRIMES OF VIOLENCE, INCLUDING BUT NOT LIMITED TO, THE GUN CRIMES OF WILLFUL KILLINGS AND AGGRAVATED ASSAULT.

THESE HEARINGS ALSO WILL CENTER ON VITAL CONSTITUTIONAL RIGHTS OF LAW ABIDING CITIZENS TO KEEP AND BEAR ARMS AND TO ENJOY THEM FOR SPORT AND RECREATION AND TO UTILIZE THEM IN LEGITIMATE SELF-DEFENSE AND HOME PROTECTION.

IT HAS BEEN MORE THAN A DECADE SINCE FEDERAL GUN CONTROL LAWS WERE SUBSTANTIALLY REVISED. IN MY VIEW, THERE ARE CHANGES NEEDED TO IMPROVE THEIR ADMINISTRATION, TO REMOVE RESTRICTIVE BURDENS ON LEGITIMATE COMMERCE IN FIREARMS, AND YET AT THE SAME TIME, IMPROVE THESE LAWS AS WORKABLE LAW ENFORCEMENT TOOLS. GUN OWNERSHIP IN USE ALTHOUGH GUARANTEED BY THE CONSTITUTION CANNOT BE WITHOUT REASONABLE RESTRAINTS AND RESTRICTIONS. THERE ARE INDIVIDUALS WITH CRIMINAL INTENT WHO MISUSE THEM. THESE INDIVIDUALS MUST BE BROUGHT TO THE BAR OF JUSTICE AND DEALT WITH SEVERELY. THERE ARE OTHERS WHO ENGAGE IN SIGNIFICANT ILLEGITIMATE COMMERCE IN FIREARMS INCLUDING EXPORT TO COUNTRIES WITH STRICTER GUN LAWS THAN OUR OWN. THESE PROBLEMS MUST ALSO BE ADDRESSED.

MR. CHAIRMAN, I ALSO WANT TO PAY MY COMPLIMENTS TO THE DISTINGUISHED SENATOR FROM IDAHO, MR. MCCLURE, AND CONGRESSMAN VOLKMER FOR THEIR LEADERSHIP IN FOSTERING SENSIBLE GUN CONTROL REFORMS EMBODIED IN S.1030. IN PAST YEARS I HAVE COSPONSORED THIS MEASURE AND AM SYMPATHETIC TO MOST OF ITS OBJECTIVES. HOWEVER, MY ANALYSIS OF EXISTING LEGISLATION HAS LED ME TO THE CONCLUSION THAT I WANT TO OFFER MY OWN REFORM LEGISLATION. THESE BILLS TO BE INTRODUCED SHORTLY, ARE COMPATIBLE IN MANY RESPECTS TO S.1030 BUT DIFFER IN OTHERS. I HOPE THAT THESE HEARINGS WILL PROVIDE A VEHICLE FOR A COMPREHENSIVE REVIEW OF THE DEFICIENCIES AND THE STRENGTHS OF THE 1968 GUN CONTROL LAWS AND PROVIDE A CONSTRUCTIVE FRAMEWORK FOR IMPROVEMENT.

THANK YOU.

Senator GRASSLEY. Because Ferris Lucas is on a tight time schedule, we have made arrangements for Mr. Lucas to be the next witness. I would like to welcome Mr. Lucas to the witness table at this time.

By way of introduction, I want to say that Ferris E. Lucas has been executive director of the National Sheriffs Association since 1964, during which time his association has grown from 16,000 members to more than 50,000.

Mr. Lucas has served in many capacities on the local, State, national, and even on the international scene, and has been called upon for his expertise, testimony, and opinion on various criminal justice matters at every level of jurisdiction.

For example, in 1975 Mr. Lucas was designated by the U.S. Department of State to serve as a representative of the United States to the 5th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Geneva, Switzerland.

Mr. Lucas, thank you for taking the time from your busy schedule to be here. I am glad we could accommodate you by moving you up in the witness list.

STATEMENT OF FERRIS E. LUCAS, EXECUTIVE DIRECTOR, NATIONAL SHERIFFS ASSOCIATION, WASHINGTON, D.C.

Mr. LUCAS. Thank you, Mr. Chairman.

Mr. Chairman, as you have stated, my name is Ferris Lucas, executive director of the National Sheriffs Association, and you know that I am no stranger to this Judiciary Committee. For the past couple of decades I have testified on numerous occasions before this committee and various subcommittees under your jurisdiction.

Once again, therefore, it is my pleasure to share with the committee the thoughts and position of the National Sheriffs Association relative to S. 1030, the Federal Firearms Owners Protection Act, which our members overwhelmingly support.

The National Sheriffs Association promotes legislation beneficial to sheriffs nationally and to the professionalism of law enforcement, so that we may enjoy the preservation of life, liberty, and the pursuit of happiness, as those were guaranteed by the Constitution and the Bill of Rights. Further, the National Sheriffs Association strongly supports the individual right to keep and bear arms as guaranteed by the second amendment to the Constitution.

Mr. Chairman, it is apparent that civilians need to protect themselves. There are not enough sheriffs or police officers to protect law-abiding citizens from the criminals who prey upon society. Therefore, it is no wonder that as long ago as 1972 the National Sheriffs Association adopted a resolution calling for mandatory—I would like to repeat—mandatory sentences for persons convicted of crimes in which a firearm is used, independent of the sentence they may receive for the specific crime.

It is exactly this proposal incorporated in S. 1030 which imposes mandatory time without probation, parole, or furlough for the use of firearms in a Federal felony against society.

The National Sheriffs Association and deputy sheriffs of this country in all the States of the Union have approximately 56,000

current members who are both active and retired. Of our nationwide number of sheriffs, this includes 3,104 active sheriffs who are in turn responsible for over 160,000 deputies.

Although some of our sheriffs may be responsible for enforcing the law over areas in excess of 20,000 square miles, they receive the bare minimum of law enforcement funds to carry out their responsibilities. With these fiscal handcuffs tightening around our wrists, we will expect to do even more with less in the coming years.

The tendency of Federal, State, and local authorities to continually impose more laws and provide less enforcement will make this situation continually worse. Further, there are not only the geographical strictures on our members but also the legal ones.

Evidence which a court in retrospect decides was improperly obtained is kept out even where the officer honestly believes that he or she was acting properly. The practical effect is that an officer in the field is judged as if he or she had a law library in the trunk of the car and a law clerk in the back seat.

Gentlemen, we are here today testifying in favor of S. 1030.

Mr. Chairman, the members of the National Sheriffs Association are in the frontline of criminal law enforcement. We are charged with the enforcement of laws which protect the citizens against murderers, robbers, rapists, and other serious offenders who, by definition, prey upon society, and we deal every day with the citizens, both young and old, who have been victims of these predators.

The laws which we enforce are not predominately regulatory ones; they are laws whose infringement inflicts directly criminal harm on our citizens. Regulatory laws, of course, may indirectly hinder criminal action and cause more work for our members, but when law enforcement resources are limited, they are necessarily drawing resources away from enforcement, which has a direct impact upon criminals and violent crime.

Every law enforcement officer who is enforcing a regulatory statute, such as the Gun Control Act, means one that is not available to answer a breaking and entering call, a robbery in progress call, a rape in progress call, or to provide the routine assistance to the public which is so often needed.

Accordingly, just as we support obtaining increased resources for our members, we support the removal of increased enforcement burdens which either do not hinder criminals or hinder them so indirectly as to be almost useless. S. 1030 is a bill which will have exactly this impact.

For example, the existing Federal gun laws make it a felony for a private citizen to give or sell a firearm to a resident in a different State, even though this would violate the laws of neither State. This can have no logical basis. The only reason to prevent an interstate transfer is to prevent the evasion of local laws, and if there are no local laws, why is there a Federal law? S. 1030 would take care of this by prohibiting interstate sales only when it would violate the laws of where the sale was made or where the buyer resides.

Last, another very important provision of S. 1030 is the addition of the word "willful" to the section outlining the criminal penalties. As it is the most technical violation, committed with the most

innocent intent, it is as serious a violation as any other. This bill would require that a violation be "willful," committed with a criminal intent, before it can be federally punished. The National Sheriffs Association strongly endorses the addition of "willful" to this section.

The only argument for permitting Federal prosecution of an unintentional violation is that it is too much work for the Federal agents to ascertain whether the individual acted with illegal intent. Our members, who every day enforce criminal statutes requiring far more detailed proof of intent of this—the requirement of premeditation and malice of forethought for murder is the most obvious one—do not consider this realistic.

Frankly, if you have the resources to prosecute unintentional technical violators of the Gun Control Act, give them to our members, and we will use them instead to prosecute murderers, rapists, armed robbers, and burglars.

The voice of the people is the supreme law. If law enforcment is to have a voice in the future of America, it must make that voice heard in the Halls of Congress and in State and local legislatures across America. Would you not cooperate with us? It is time to consider a change. We believe that S. 1030 is the needed change at the needed time.

I thank you.

Senator GRASSLEY. Thank you, Mr. Lucas.

Before I ask questions, I am going to have inserted in the record an article on handgun safety that is attributed partly to advice from your association as well as the National Rifle Association. I want to have that printed in the record at this point, without objection.

[Aforementioned article follows:]

HANDGUN SAFETY

Advice from the National Rifle Association and National Sheriffs' Association

Firearms can be dangerous. If you keep a pistol in your store, learn to use it properly and safely so that it doesn't endanger you, your staff, or your customers.

The epidemic of robberies and attempted robberies of pharmacies has driven many pharmacists to acquire weapons for the protection of their stores, their staffs, and customers.

"After nearly 50 years in law enforcement, I firmly believe in the right of all law-abiding citizens to keep weapons in their homes and places of business," says Ferris E. Lucas, executive director of the National Sheriffs' Association in Washington, D.C. "I also believe that it is the duty of everyone who acquires a firearm to become familiar with proper firearms safety.

"Firearms can be dangerous. I have some concern about druggists' acquiring weapons. Failing to qualify themselves with those weapons can pose a threat to their safety and the safety of their employees and customers."

If you own a handgun or are considering getting one, study the following rules for the safe handling of firearms, presented by H. Wayne Sheets, director of education for the National Rifle Association in Washington, D.C., and by Mr. Lucas.

Check the laws first

Before you buy a firearm, carefully check all applicable laws in your locale relating to the purchase, ownership, keeping, or carrying of firearms. Laws vary widely from state to state and even from county to county. Pharmacists, like other community leaders, must be especially careful to comply with the law.

Consider the options

Buy a handgun the same way you buy any other product, such as an automobile, television, or lawnmower. Carefully consider the available options before you decide.

Two types of handguns—revolvers and semi-automatic pistols—have been in use for many years. Both have such options as single or double action, barrel length, caliber, weight, type and size of grip, and fixed or adjustable sights. In considering the pros and cons of each, you should consider safety as well as effectiveness. Pick the type you understand best and feel the most confident with.

Also consider the cartridge your handgun takes. The caliber designation is simply the size of hole in the barrel. There are many dif-

ferent cartridges of the same caliber—some interchangeable and some not. You can use .44 Special cartridges in .44 Magnum revolvers, but you cannot use .44 Magnum cartridges in .44 Special revolvers.

The more powerful cartridges, often called magnums, produce higher striking energy, greater range and penetration, and higher recoil. The benefit of higher energy must be balanced against the greater difficulty of controlling the handgun. The increased recoil can reduce control as well as accuracy.

The bullet is that part of the cartridge that travels down the barrel and through the air to the target. There are many types, including soft point, hollow point, wadcutter, full metal jacket, and metal piercing. While the striking energy might be the same for all, the effect on the target is different for each one. You should understand the effect of the bullet you choose.

The local sheriff or police department can also offer a great deal of information on firearms, to help you choose your gun and become familiar with its capabilities.

Learn to handle it safely

Having selected a handgun, you should learn as much as possible about its function. Ask for a demonstration of its function and proper handling at the gun store. Study the manufacturer's instruction manual which accompanies the firearm. You may want to attend a National Rifle Association basic pistol marksmanship course. You can also get the *NRA Basic Marksmanship* (Catalog # ASD-00110) and *Home Firearm Responsibility* (Catalog # ASF-00560) manuals for 50¢ each from the NRA Service and Catalog Department, P.O. Box 37298, Washington, D.C. 20013.

Get qualified instruction

After you have learned to handle your firearm safely, you are ready to learn the basic skills of marksmanship. It is best to seek out an NRA Certified Instructor, says H. Wayne Sheets.

Be sure you understand the rules and regulations of the particular range you are using. Many ranges have these rules posted. If they do not, seek out the range officer in charge and have him explain them to you. If you shoot on other than an established range, be sure you first have the permission of the property owner and be especially careful that the backstop behind the target will stop the bullets without any hazard of ricochet.

Three primary rules

Whenever you handle a firearm, Mr. Sheets emphasizes, you should *always*:

- Point the muzzle in a safe direction.
- Keep your finger off the trigger until you intend to shoot.
- Keep the action open and unloaded. Keep it open at all times when you are handling the gun. If someone hands you a firearm, ask him to open the action before you take it.

Strict adherence to those rules will develop habits that build confidence in your ability to handle firearms safely and effectively. The best way to develop these habits is to treat every firearm as if it were loaded.

Proper grip and body position are two of the basics your instructor should teach you. You should learn the proper methods for sighting and aiming, trigger squeeze, breathing, loading and moving into position, unloading, and rhythm, and you should practice them over and over.

Practice, practice, practice

Once you have learned the fundamentals of marksmanship, you are ready to practice on your own. Regular practice will maintain your familiarity with your handgun and will increase your proficiency.

Even after you are a competent marksman, continue to fire at regular intervals to maintain your skills.

Cleaning, storage, and transportation

With proper cleaning and maintenance, your handgun should last a lifetime and be functionally safe. The first step in cleaning is to be sure the firearm is unloaded and all ammunition is stowed away from the cleaning area. Check the manufacturer's recommendations about cleaning and maintenance. If the manual is unavailable, you can probably write the manufacturer for another copy. Firearms that are not operating properly should be turned over to a competent gunsmith or returned to the manufacturer for repair.

The key to safe transportation is to unload the firearm and case it separately from any ammunition. Be sure to adhere to all laws concerning transportation of firearms in your jurisdiction.

When your handgun is not in use, store it separately from the ammunition. Keep both under lock and key, out of reach of children and others who may not know how to handle them properly. ☰

Senator GRASSLEY. Now Mr. Lucas, since you touched on this in your testimony, I might bring up that there are several proposals pending before Congress to limit the exclusionary rule, and especially proposals to restrict it where the police officer believed in good faith that he or she acted properly in securing the evidence. I would appreciate, as I am sure the committee would, your position on efforts to amend the exclusionary rule.

Mr. LUCAS. The National Sheriffs Association is on record as being in favor of abolishing the exclusionary rule. We feel that it is a great hindrance to law enforcement and especially to the officer out in the field. We are on record to abolish the exclusionary rule.

Senator GRASSLEY. Does your organization have a position on mandatory sentences for actual use of a weapon in a crime?

Mr. LUCAS. Yes, sir, we do. In 1972 we passed a resolution at our conference whereby there should be a mandatory sentence in every State for the use of a firearm in the commission of a crime.

We are also on record for mandatory sentences in certain types of crime. I think it is a little asinine to have some of the courts—and according to some of the information I have had from Michigan, which is my home State, and the president of the Florida Sheriffs Association, where they have mandatory firearms sentences, the courts are now giving them a very minor sentence for the offense. So the mandatory gun sentence does not mean too much. We think that for certain crimes—and we are on record for this—there should be a mandatory sentence and a mandatory sentence for use of a gun.

Senator GRASSLEY. Obviously, crime is a major issue for all Americans. If your members were here today to talk to us as Senators and Congressmen, what would they ask us to do at the Federal level to assist them in protecting our citizens?

Mr. LUCAS. I think the greatest thing is incarceration. I think that if they would incarcerate 25 or 30 percent of the hardened criminals, they would stop a lot of crime throughout the United States.

I am not criticizing the courts, but in many places—and the previous witness touched on this—the courts have it so you must have x number of square feet. In most places they are saying 77 square feet for a prisoner. I think it is a little asinine. I think that is more than most people have in their homes, especially if they have two, three, or four children, and a man and his wife. Incarceration—the repeaters are the biggest problem in law enforcement today.

Senator GRASSLEY. Are there any other ideas you would want to present for the record?

Mr. LUCAS. I would like to say that I understand the Institute for the Study of Prevention of Handgun Violence had a poll conducted by Pat Caddell. It showed that some 3.8 million Americans who own handguns for protection have used them for protection. That means about 600 times per day some private citizen uses a gun for self-protection—their own. We think they should have.

You mentioned my going to Geneva, Switzerland. Mr. Velde, whom I see over there, was there. A man from Switzerland got up and talked there about guns. He said that in every home every male 18 years or older must have a gun issued by the government,

and cartridges to use it, and keep it in the home. And yet crime is the lowest in Switzerland for any country in the world.

Senator GRASSLEY. I would now like to turn to that question that Senator Specter has asked me to ask each witness today, about what your thoughts might be on that provision of S. 1030 which contemplates concurrent rather than consecutive sentences for the use of a firearm during a felony under Federal law.

Mr. LUCAS. I will agree with the previous witness. I do not think there is any such thing as a concurrent sentence. I think it should be over and above the regular sentence. That is why I said a minute ago it should be a mandatory sentence for certain crime—I do not say all crime but certain crimes—and the use of a gun should be mandatory over and above that. A concurrent sentence does not mean too much, in my opinion.

Senator GRASSLEY. OK. I want to thank you very much. That is all the questions I have. You might anticipate some written ones from other members of the committee. I want to thank you for your testimony and that of your association.

I also want to say that in the years that I was a member of the Iowa Legislature I had a very close relationship with your counterpart in Iowa, the Iowa State Sheriffs Association, and the fine people that represented that organization before the Iowa Legislature. Thank you.

Mr. LUCAS. Thank you. I have been there many times.

Senator GRASSLEY. Our next witness is David T. Hardy. He is a partner in the law firm of Sando & Hardy in Tucson, Ariz.

Mr. Hardy, I note that you are a member of both the American Civil Liberties Union and the National Rifle Association. You have in the past also served as associate editor of the Arizona Law Review and as a fellow of the Institute for Humane Studies Law and Liberty project.

You have been interested in the practical and constitutional aspects of firearms regulation for nearly a decade and have published articles in the Chicago-Kent Law Review, William and Mary Law Review, Business and Society Review, Case Western University Law Review, and Case and Comment Journal.

Together with Kenneth Chotiner, vice president of the ACLU in southern California, and Mark Beneson, general counsel to Amnesty International, you have coauthored several chapters and contributed them to Donald Katz's anthology entitled "Restricting Handguns: The Liberal Skeptics Speak Out."

Mr. Hardy, I understand that you are no stranger to testifying before this committee and that you have done so on a number of constitutional civil liberties issues, so I welcome you back here again.

STATEMENT OF DAVID T. HARDY, PARTNER, SANDO & HARDY, TUCSON, ARIZ.

Mr. HARDY. Thank you, Mr. Chairman.

Mr. Chairman, in any large organization—and surely a nation of 220 million people is a large organization—we always find a gap between practice and reality. There are probably few greater gaps than you find in the area of the Federal firearms laws.

As you noted earlier, Mr. Chairman, the policy behind the Federal firearms laws was originally—and it is set forth in section 101 of the Gun Control Act—to aid State and local authorities in making cases against violent criminals. That is the policy; that was the theory; the practice has been radically different.

In practice, when a violent criminal comes to the attention of Federal authorities, he will come to their attention because State and local authorities have arrested him on some charge. Federal authorities do not have general stop and frisk powers. In practice, they do not have the power to monitor the local Circle K to see if someone is going to stick it up—any of that sort of thing. If a violent criminal comes to the attention of a Federal agency, in most cases it will be a referral after an arrest or at least a stop and frisk by local police.

PETITE POLICY BARS USE OF FEDERAL GUN LAWS AGAINST REAL CRIMINALS

In fact, however, a policy known to the Department of Justice as its petite policy has barred the bringing of Federal prosecutions in exactly those cases. As reflected in a recent edition of the U.S. Attorneys Manual, the policy is that:

> No Federal case should be tried where there has been a State prosecution for substantially the same act or acts without a recommendation having been made to the assistant attorney general demonstrating compelling Federal interest for such prosecution.

What this policy in practice has meant is simply that Justice in the vast bulk of cases cannot and will not accept prosecutions against genuine violent criminals who, by coincidence, have violated the Gun Control Act and who have been referred to Federal authorities.

I believe that if we consult the record of the Subcommittee on the Constitution which held hearings last year, in those hearings there were letters from two Illinois judges who had written specifically because they had been pressing Federal authorities to take cases against convicted felons in illegal possession of firearms, including sawed-off shotguns, and the Federal authorities would not prosecute those cases.

The petite policy's effect is simply to guarantee that the one type of cases which predominately will not be brought under the Gun Control Act are cases which would assist State and local authorities in their fight against violent crime. That is simply ruled out in the vast bulk of cases.

Obviously, there would be two ways to deal with this problem. One of them would be to remove the petite policy. In this case the cure would be worse than the disease.

It costs approximately $61,000 per Federal firearms arrest in terms of allocated agency spending authority. For $61,000, the authorities where I come from in Pima County prosecute approximately 12 serious felony cases. That is counting prosecution, court, and public defender expenses.

So, the simple fact of the matter is that, for every Federal firearms arrest you prosecute, you consume resources which would be necessary to prosecuting 12 violent criminals at the State and local

level. You simply cannot federalize standard street crime enforcement.

The second possibility would be to concentrate on cases where there is indeed a bad individual involved, but somehow he has never broken a State law or come to the attention of State authorities, and it would be worth $61,000 per case to catch him—worth giving up prosecuting 12 other criminals.

That would be rational, but the policy would be almost impossible to put into effect. You would have to accept that there would be certain local Federal prosecuting agencies where you might have five agents, and might make two cases that year.

That would be theoretically functional, but in practice those five agents sooner or later are going to get phased out, and they are going to know they are going to get phased out, and because of that they are not going to be content with three cases. If there are only 3 good cases that they can bring under the petite policy, they are going to have to drum up 10 or 20 more which are bad cases but which can be brought.

Since the cases they cannot bring are the cases against persons who have violated State and local laws and been apprehended for it, they must bring the only other type of case, which is a case against an individual who has not violated a State and local law, who is not a robber, rapist, or murderer.

TASK FORCE ON ENFORCEMENT OF FIREARM LAWS

So, what has eventually happened is what I saw as the director of the Second Amendment Foundation's Task Force on Enforcement of the Federal Firearms Laws.

The task force, which published its volume, as I recall, under the title "BATF's War on Civil Liberties," consisted of individuals ranging from a wide span of private life. We had several law professors of national renown; we had two national directors of the ACLU, one of the New Jersey Civil Liberties Union, one of the Southern California Civil Liberties Union; we had even a professor of history and one of philosophy to cover the abstractions.

Our essential findings were that there was extensive misuse of the Federal firearms laws in order to justify agency goals. In particular, there was one case that we examined, the "straw man" type of case, which I believe is explained in my written testimony; it perhaps would be too lengthy to explain it here. Suffice it to say that it was a technicality in the law which enabled the prosecution of individuals who had refused to violate the law—who had said they would not sell to a nonresident. It enabled agents to convince them that a certain sale was legal when in fact it was, in their view, not, and therefore the person would make the sale believing that it was legal, and therefore he could be arrested.

What we found in that type of case was that the agency had refused to define what that offense was, I believe, in order to keep it vague so they could make cases of this type.

I made a request under the Freedom of Information Act for any documents which the enforcing agencies had relating to the "straw man" case, and then I defined it. The agency, at great length, responded that they had no such documents, that there was no such

creature. A minor problem was that there had been approximately 100 people prosecuted under it who would attest that indeed there was such a creature and they had been rather badly bitten by one.

Eventually, later requests under the FOIA statute yielded additional information which showed that they had had the documents but simply had not been too interested in giving them up. One of the reasons may have been that an employee had made a logical suggestion, which was, if this is a source of criminal guns, if this is illegal, why do we not just tell the dealers about it, and then they will not do it?

This was batted back and forth within the bureaucracy. The final outcome of it was, they agreed to print a warning, "Do not make sales of this type." They printed it on the back of the form 4473 in very fine print as item No. 2. I think any dealer can tell you, Mr. Chairman, no one in recorded history has ever read the back of a form 4473. It normally contains little information beyond "Fill in the name in the name blank and the last initial in the last initial blank." If the Agency wanted to go out of its way to make sure that no one would know what the law was or be able to comply, they could not have chosen a more perfect way.

A second major problem that we found was extensive use of the confiscation power. Under the Freedom of Information Act I made inquiries relating to the character of guns which were being confiscated by the enforcing agents at that time. At that time they were averaging nearly 10,000 guns a year confiscated under the Gun Control Acts.

We found several interesting things. The first was that, even though the enforcing agency claimed that the gun typically used in crime was valued at under $50, in fact the average value they assigned to the guns they were confiscating was well over $100. I should add that it has increased since that time.

The second thing which I discovered, subsequent to the publication of the report, was a memorandum to Carl Belcher, Chief, General Crime Section, Criminal Division of Justice, from a subordinate attorney relating to gun law enforcement, dated April 1970.

In the memorandum this attorney related—and this is an internal Justice Department memorandum—"On a number of occasions, agents, acting on their own initiative, have seized licensed dealers' entire stocks of firearms on the basis that the dealers made a number of illegal sales and/or improperly maintained their records. It was claimed therefore that the entire stock of the dealers' firearms was forfeitable pursuant to 18 U.S.C., section 924." He goes on to say, "At least one judge, in reviewing such a seizure in response to a dealer's motion for return of his stock of firearms, has stated that the agent's action in seizing the firearms was 'unconscionable.' Since a judge who must rule on motions for the return of firearms seized in this manner is usually the same judge before whom the case must be tried, such precipitous seizures place the underlying case in a very poor prosecutive posture."

I would only observe that when the prosecutors are objecting that there have been too extensive confiscations, so extensive that it is biasing the judge against their case, and would the agents kindly back off, you have an extremely serious situation.

We also found that, of the firearms taken, an enormous number were being taken and devoted to "official use," including in one case a shotgun valued at $10,000, inlaid with precious metals and gems. One office had requested "for official use" more confiscated firearms than they had agents to use them. So apparently a goodly number of these were being devoted to this "official use."

NEED FOR S. 1030

To crystalize what this study and my subsequent examinations tend to show, I believe there are three major issues in the law which have to be dealt with. The first is the tendency of the Gun Control Act to be vague and overbroad.

For example, there are categories of prohibited persons who cannot purchase firearms, cannot receive firearms, or cannot possess firearms, but there are different categories under each section; they simply are not consistent.

Although, if it is a State conviction which disables a person from owning a gun, a pardon will, under the statute, expressly permit him to possess firearms, the drafters forgot to put the pardon section under the receipt of firearms, so that one court has ruled that a pardon does not permit a person to receive a firearm even though he may legally possess one.

The mandatory sentence which was originally incorporated in the Gun Control Act works out as actually a concurrent sentence. Although billed as a mandatory sentence for the use of a firearm in a crime, in fact it becomes mandatory only on the second conviction, and no one has been convicted twice under that section, that I have been able to ascertain. Moreover, the U.S. Supreme Court has ruled that the existing mandatory penalty under the Gun Control Act cannot be applied to bank robbery or any other offense which has being armed as an element of the offense itself. So, effectively, that section of the Gun Control Act is useless.

The second major problem is that there is no intent requirement. The great 18th century liberal commentator, William Blackstone, was able to observe at that time that the notion of a crime without criminal intent was unknown to the laws of England. During the latter part of our last century and the early part of this century, though, we passed extensively at the State and local level regulatory laws—largely housing codes—which permitted conviction despite a lack of criminal intent. Most of those were classed as misdemeanors. Most recently, it has passed over into the Federal law.

Now, what would have been regarded as an absurdity or clearly patently unconstitutional a century ago, it is accepted that there are many sections of the gun law where a person can be convicted of a felony, with all of the felony consequences, when he never intended to break the law and never had illicit intent.

Volkmer-McClure changes this back to require proof of willfulness of intent, knowledge that a person was behaving illegally or improperly. I can tell you, Mr. Chairman, the prosecutors at the Federal level probably will not like this. They essentially, like everyone else, believe in having the easiest job in front of them that they can, but the fact is that this type of thing is essential to the protection of our citizens. If we want only the intentional, the

criminal, the evil violators to be prosecuted, we have to put that in law.

The third and last area is the seizure power. As I mentioned, the Gun Control Act of 1968 broadly permits seizure and forfeiture of firearms without specific identification of them. It does not provide that if a person is acquitted of the offense he gets his firearms back. Most people would probably be surprised by that, but in many cases which we found, firearms were seized, the individual was acquitted of all charges, and the firearms were then withheld, and he was forced to sue for them, the argument being that the criminal adjudication did not bind the Government as to the confiscation, so that a man who was found innocent of a jury of his peers might still have to sue to get his property back.

Recently the fourth circuit has ruled in the case of Patrick Mulcahy, who testified, as I recall, before the Subcommittee on the Constitution, that they would order the return of firearms in this sort of situation. I think that is a great blow for freedom, and I think that it should be incorporated into Federal statute and not just into the caselaw of that one circuit.

Volkmer-McClure takes care of this by requiring that firearms be specifically identified, by providing that if a person is acquitted the firearms must be returned, and by providing attorney's fees to the private citizen in the event that he sues and wins their return.

Mr. Chairman, I think these are very logical steps. I think it marks a return to essentially the Jeffersonian ideal. The tendency of not only firearms laws but many forms of laws during the late 1960's was not always commendable.

If, of course, the individual always preferred the group good to his individual good, the scope of criminal laws would be irrelevant because we would not need criminal laws; there would be no criminals. The laws which were enacted during that period, chiefly the Gun Control Act of 1968, reflected an attitude that the enforcers should have all power because they would never violate the laws or misuse them for their private good, or their agency good, or to retain their jobs, whereas the citizen should have a minimum of power because, after all, he might misuse it. Essentially the citizen was viewed as an incipient criminal and the enforcers as incipient gods. I do not think that is the type of view of values upon which you can base a democracy.

I do not see Volkmer-McClure primarily as a gun issue or even primarily as a law enforcement issue; I see it primarily as a civil rights issue.

CRITICISMS OF S. 1030 UNFOUNDED

We had some testimony earlier, before your committee, which attacked the bill. One thing which struck me as I listened was that the groups which were attacking the bill could take one of two positions: One, they do not accept those rights for anyone, gun owner or non-gun owner. They believe that if a person is acquitted of crime, he should not necessarily have his confiscated property back. They believe that the Government should have the power to enter premises without a search warrant and without probable cause. They believe that a person should be prosecuted who had no

criminal intent, whether it is under the gun laws or otherwise. If that is their attitude, I admire their consistency, but I condemn their values.

The second possibility would be that they accept these as general rights of human beings and American citizens but feel that they do not apply to gun owners. In that event, I condemn both their consistency and their values, because in the defense of human rights and civil rights, the first rule is that the broader you draw the lines of defense, the safer you are. The more people who perceive themselves as having a vested interest in freedoms, the more people will defend those freedoms, and the greatest danger to freedoms is eternally having a group, cut off, which does not perceive itself as included within the freedoms and therefore has no reason to defend them.

Some of the objections which were made against this particular statute simply made no sense. I recall the National Coalition to Ban Handguns complaining about the section which says that where a dealer is cleared of criminal charges he cannot have his license revoked and claiming that this and other sections would, I believe the quotation was, 'gut the Gun Control Act of 1968.'

I note that last year the enforcing agency told the Senate Committee on Appropriations that during fiscal year 1979 they brought exactly two charges of this type, both of which they lost. I do not think that this could be the section that would "gut the Gun Control Act of 1968."

They also complained about requiring proof of a willful violation and claimed that proving willfulness would be an "often impossible burden." I would only note that most State and local authorities prove more than this every day, as one of the earlier witnesses noted, and for murder, robbery, or rape cases prove an infinitely greater quantum of intent.

They also complained about granting attorney's fees where the claimant wins. Frankly, if NCBH believes that enforcement agencies rarely engage in such malpractices, I cannot see where they would object to granting attorney's fees in cases where the malpractices were proven. If they really think that it does not occur, they should have no objection to granting attorney's fees in the event that it does.

Finally, both Handgun Control, Inc., and the National Coalition to Ban Handguns complained that S. 1030's mandatory sentence would be inadequate. NCBH claimed that so long as a felon does not shoot anyone he has not "used" a gun in crime and therefore would not be subject to the mandatory. I would only refer the committee to the case of *U.S.* v. *Moore*. That is a Ninth Circuit decision from 1978 which upheld a conviction for using a gun where the robber was found with a firearm before he even began the actual crime.

I would suggest that if these gentlemen had done the least amount of legal research, such as reading the cases under the section they were interpreting, it would be obvious that their contentions were simply untrue. In conclusion, Mr. Chairman, I think S. 1030 is vitally needed legislation from a purely civil libertarian standpoint. I think the malpractices, as were documented by the task force report, I think the malpractices which have come to

light under this committee's and the Subcommittee on the Constitution's investigations, make legislation such as this absolutely mandatory.

Thank you, Mr. Chairman.

Senator GRASSLEY. I recall that one of the objections to S. 1030 was that it might weaken existing Federal penalties for using a firearm in crime. Do you feel that it might have this effect?

Mr. HARDY. No, Mr. Chairman. The existing Federal mandatory in the Gun Control Act of 1968 talks about having an additional penalty for use or carrying of a gun in crime. Volkmer-McClure, as I recall, makes it a mandatory penalty—no probation, no parole, no work furlough, no release of any type—for use of a gun in a crime against a person, which is what that type of mandatory ought to be applied to anyway.

I think under that case, *U.S.* v. *Moore*, it is obvious that you can charge using a gun in a crime in virtually any case where the person, as the *Moore* court said, uses a gun as a tool to further his criminal acts. So I think, if anything, Volkmer-McClure's mandatory would provide a far more meaningful mandatory sentence than you now have under existing Federal law.

Senator GRASSLEY. While on this subject of mandatory penalties, I think it has also been suggested that mandatory penalties should be imposed for carrying a firearm without a permit or similar offenses. Do you have any opinion on the merits or demerits of that proposal?

Mr. HARDY. Yes, Mr. Chairman. I had some notes—I think they are here—on the experience in New York. New York recently adopted—I believe starting in August of last year—a law of that type.

The problem is, with these particular mandatory sentences, you are taking away discretion from the judge. You may get cases where it is a first offense; you may get cases where the individual is a very decent type of person or who possessed with lawful intent, such as defending himself or herself. A mandatory sentence of that type poses the risk of imprisoning a lot of people who fall into that class. Moreover, it simply is not practical.

The New York Times of November 26, 1981, had an article on New York's experience with a law of that type. They said that New York City had made 9,500-odd arrests its first year under that 1-year mandatory sentence. New York State only has about 21,000 authorized jail spaces, so if New York really attempts to enforce that law, they are going to have to turn loose about one-half of the criminals presently imprisoned in all of the prisons of New York State just to house the gun law violators from New York City. I would suggest that this is simply not going to be practical.

There was a suggestion, I believe in the bill sponsored by Senator Kennedy and Representative Rodino, to extend this nationwide under a national gun law, which would be even more disastrous.

If you take the figures from New York City, which presently has a population, I think, of about 6 million, and expand them to a population base of this Nation, which is about 220 million, when you get through with the mathematics, it becomes obvious that you would have to release about 80 percent of the present prison population just to make room for the gun law violators under that man-

datory sentence. Since our overcrowded prisons at the moment hold primarily serious offenders—I mean, you do not get first offense burglars in prison today, you only get multiple offenders and violent offenders—it would involve turning loose about 150,000 violent offenders to make room for the gun law violators.

I would think at that point that they would be right as to one thing, which is, you would not want a handgun for self-defense in that situation. You would want a water-cooled machine gun, because the criminals, with 150,000 or 10 divisions of them out on the street, would be able to attack in company or battalion strength. So I think laws of that type, Mr. Chairman, would be totally disastrous.

Senator GRASSLEY. There has been a move to shift firearms enforcement out of the Treasury Department and into the Justice Department. Would that help matters any, in your opinion?

Mr. HARDY. I do not think it would, Mr. Chairman. As I mentioned earlier, one of the main problems has been the petite policy, which is a Justice policy by which Justice made sure that Federal courts will not be used against true violent criminals.

I think also you have got to recognize that in every one of these cases where we are talking about a prosecution or guns withheld after arrest—after acquittal—Justice Department attorneys handled the case, Justice Department attorneys agreed to go ahead with the case, and in many of the cases, especially withholding of guns after acquittal, Justice Department attorneys were the ones who made that decision.

The temptations to abuse are inherent in the vague structure of the law, are inherent in the great powers granted, are inherent in the seizure powers under the law, and if you do not change the law, you run the risk of corrupting whoever happens to enforce it. The fact that the enforcing agency right now is known as the BATF is not an inherent problem in the abuses, it is coincidental.

Senator GRASSLEY. I have noted that some earlier hearings discussed abuses of the law that dates back to 1969, and yet several of the persons who testified before us in December had ongoing cases or matters which had been resolved within the last year. That would suggest an extremely long-term problem. Why have these problems persisted?

Mr. HARDY. There are several reasons, Mr. Chairman. If I might, I would mention what I would tend to think is probably the worst problem. Normally, when you have enforcement of a law in an oppressive manner, you have certain resources which are thrown into the fight against it, chiefly civil liberties organizations, the media, and so on, who begin to expose that type of enforcement and throw in a counterbalance.

In the firearms area you have not seen that. As a matter of fact, in the firearms area you would be hard put to document that the ACLU ever existed or that it was anything except a defender of governmental power. I think that this has been a major factor—the fact that if cases were brought in an impressive fashion, all the enforcers had to do was issue a press release saying, "So-and-so, whom we raided today, was a noted gun runner," and it would be obediently reported in the media as exactly that. Even after it was proven—and I know of several cases where it was proven—that

statements were made which were total lies, you would see no updated reports. Therefore, these normal resources which would counterbalance oppressive enforcement never came into play.

I recall one case a couple of years ago, *U.S.* v. *Hayes*—Paul and Billie Hayes; they testified at one of the early hearings. Subsequent to those hearings, I believe it was the National Coalition to Ban Handguns which got some transcripts from BATF, released them to the local media, slandered the Hayeses up one wall and down the other, and accused them of everything conceivable.

During the Subcommittee on the Constitution's hearings I got those same transcripts, cross-checked them against more authentic transcripts made by the court reporter, and found that all of the supposedly incriminating statements were not to be found in the court reporter's transcripts; they were essentially additions made by the enforcing agents—creative reporting. This was revealed during those hearings quite extensively, and even the documents were brought in, showing that virtually every statement NCBH had made was totally and patently false.

None of the media which carried the initial attack on the Hayeses carried one word of that refutation. None of them carried one word that the original statements might have been incorrect. None of them seemed offended that they had been manipulated by NCBH in order to defend enforcement under this law.

So I think what you get is a situation where, as NCBH went on to do, they could get—I believe it was—the National Law Journal to write another article on this case and then go on quoting that particular article even when they knew it was false. If you have that sort of thing where, between the media and the civil liberties organizations, there is no defense against oppressive law enforcement, inevitably you are going to have long-term oppressive law enforcement.

Senator GRASSLEY. I note from your written testimony that you have a lot of State and local prosecutors among your professional associates and people with whom you have friendships. I presume you have had an opportunity to discuss with these people the enforcement of Federal firearms laws. That is probably a fair assumption. What is their view on what needs to be done regarding violent crime and firearms laws?

Mr. HARDY. Most of my prosecutor acquaintances have maintained—I should back up. They are the ones who first brought the Petite doctrine to my attention—their complaints over that particular statute. If you sit down with almost any prosecutor and most local police, you can find various war stories about cases of violent criminals who have been referred to Federal authorities who then would not handle them. They will not say it on the record, they will not say it officially, but if you will sit down and talk with them, you will find stories of that type.

Most of them have maintained that what they have a great shortage of is resources. In Arizona, for instance, they have mandatory sentencing for most second offenses, most violent offenses. In theory it outlaws probation, parole, and so on. What has happened is that the State prison is totally overcrowded, even handling no one but the serious mandatory sentenced offenders. So they wind up turning people loose on a work furlough who have no jobs. They

simply turn them loose to find work just because that is the only way to release them. They are over capacity; they are under court orders to reduce it.

Most of your local authorities would probably say—and most of them that I have talked to have said—that they need the resources. They need some technical back-up from the Federal agents. I have heard several espouse establishment of regional crime laboratories so that they would not have to send everything here to Washington for analysis in the centralized crime laboratory. But most of them are extremely interested in increasing their resources and the technical back-up and simply prison space to deal with the problems.

Senator GRASSLEY. I would now like to ask you the question that Senator Specter has posed to other witnesses and that you have heard, but just to remind everybody in the audience. It is in regard to your thoughts on that provision of S. 1030 which contemplates concurrent rather than consecutive sentences for use of a firearm during a Federal felony.

Mr. HARDY. Mr. Chairman, I think that the way it now works out under S. 1030, if I remember correctly, you could have a concurrent sentence, but it would be a mandatory sentence. So what it really amounts to is, concurrent with any underlying conviction/sentence, the person would serve another sentence, but he would have to serve at least part of that hard time.

So in a roundabout way it winds up imposing a general mandatory time provision on any Federal conviction that involves the use of a gun in a crime against a person. That is a sort of roundabout way of doing it, but it does that particular job.

If the committee wanted to make it consecutive and mandatory, I think it would be simple enough to just take that language which was put in the Gun Control Act, I think by its amendment in 1970, to the effect that the mandatory time must be served in addition to, and consecutive to, any time on the underlying charge. I think that would be a relatively small drafting problem.

I think in either event it is rather academic, because if a judge does not want to put the individual away, he is just going to serve that minimum mandatory anyway, and the judge will give him probation on the underlying charge, and so the consecutive or concurrent will not make any difference.

If he really wants to throw the book at him under Volkmer-McClure, I believe he can give him up to 10 years for the mandatory charge alone and up to 20 years, I think, on the second charge. I may be wrong on those numbers, but essentially, if the judge wants to throw the book at a criminal under Volkmer-McClure, he can do that too—for example, 20 years without probation or parole.

So I am not so sure that the change would make a great deal of difference, but I think it can be done relatively easily.

Senator GRASSLEY. At this point I have asked all the specific questions I want to ask. I would finally say to you, if there is anything you want to add that you have forgotten about or maybe you thought would be covered in questions that are not and that you would like to add at this point, please feel free to do so.

Mr. HARDY. I cannot honestly think of anything, Mr. Chairman.

Senator GRASSLEY. Then I want to thank you, Mr. Hardy, for your fine testimony. In fact, I want to thank all the distinguished witnesses for their presentations.

Mr. HARDY. Thank you.

Senator GRASSLEY. The record will remain open for 1 month for the submission of any additional materials. I think we have created a fine record during the course of this and the prior two hearings. Again, thank you. This hearing is adjourned.

[Whereupon, at 11:45 a.m., the hearing was recessed, subject to the call of the Chair.]

[Prepared statements of David T. Hardy and the National Rifle Association of America follow:]

PREPARED STATEMENT OF DAVID T. HARDY, Esq.

Mr. Chairmen and Members of the Judiciary Committee:

My name is David T. Hardy and I am a partner in the law firm of Sando & Hardy of Tucson, Arizona. I have for a number of years studied the enforcement of firearm laws at the state, local, and federal level and have published on that subject in scholarly journals including William and Mary Law Review, Chicago-Kent Law Review, Law & Liberty and Case & Comment.

Some years ago I had the honor of serving as project director for the Second Amendment Foundation's task force on the enforcement of the federal firearms laws, whose members ranged from professors of history and philosophy, to practicing attorneys, to ACLU officials. I was the principal draftsmen of their report, published under the name "The BATF's War on Civil Liberties". Since that time I have also functioned as a legal consultant with the National Rifle Association and as a volunteer attorney in several cases brought under the federal firearms laws. While my primary exposure to federal firearm law enforcement has been from the standpoint of an attorney defending the rights of individual citizens rather than the power of governments, some of my closest friends and associates—and, for that matter, my law partner of six years, John Sando -- are prosecutors or former prosecutors. I am therefore to a certain extent conversant with the needs and problems of prosecutors dealing with actual street criminals at the state and local level.

S. 1030 is long overdue, from the standpoint both of restraining street crime and of protecting the rights of individual citizens who are more likely to be its victims than criminals. The original broad commands and overly generalized purpose of the Gun Control Act of 1968 led inevitably to its abuse and diversion from its proper ends. The preamble of the Act declared the theory "that the purpose of this title is to provide support to federal, state and local law enforcement officials in their fight against crime and violence," and not "to place any undue or unnecessary federal restrictions or burdens

on law abiding citizens with respect to the acquisition, possession or use of firearms." within a year of that statute, however, the Department of Justice transmitted a memorandum to US Attorneys, reciting this section and then stating "Congress did not intend these statues to supplant state laws, but to supplement them. In otherwords, if a convicted felon is apprehended burglarizing a gun dealer and in possession of some of the dealer's guns, he should be prosecuted under state burglary laws, not under title VII."[1] Accordingly, the memorandum required prior approval by Justice's headquarters before anyone sought to indict a felon for possession of a gun. This was a recodification of Justice's "Petite policy", which commanded, "no Federal case should be tried where there has been a state prosecution for substantially the same act or acts without a recommendation having been made to the assistant attorney general demonstrating compelling federal interests for such prosecution."[2] Given that federal agents have no general power to seek out, frisk or arrest perpetrators of street crime, they simply do not encounter actual criminals other than those cases referred by arresting state and local officials, these policies guaranteed that the one thing the Gun Control Act would not do is aid "Law enforcement officials and their fight against crime and violence".

To be sure, we cannot lightly blame federal officials for not bringing federal cases against street criminals. Whereas prosecution at the state level costs approximately $5,000 per felony trial, Congress has been authorizing approximately $60,000 in criminal enforcement firearms budget per federal firearms arrest.[3] Simple economics would indicate that each federal firearms prosecution consumes public resources sufficient to

[1]Department of Justice, Memorandum #639, Aug. 11, 1969, pg. 19.

[2]Note, "The Petite Policy; an example of enlightened prosecutorial discretion," 66 Georgetown Law J. 1137

1 Department of Justice, Memorandum #639, Aug. 11, 1969, pg. 19.

[3]$61,982, to be precise. Congressional Record, July 28, 1981, H 5078 (daily edition).

prosecute approximately 12 criminals at the state or local level. Federal resources would be reserved only for the most extraordinary cases in any system administered solely according to reason.

If the world operated according to the dictates of reason, of course, there would be no need for criminal law at all. The same weaknesses of human temperment which make the controls of criminal law necessary also affect those human beings who administer justice systems, and often lead them to prefer their own interest to that of the general welfare. A system which prosecutes only rare and extraordinary cases necessarily is going to be a very small system. An agent who prosecutes only such cases is going to have very poor productivity figures upon which to argue for promotion and raises. An agency enforcing the gun laws, which in recent years boasted up to fifteen hundred agents and a budget in the tens of millions of dollars, is going to have trouble justifying itself if it takes only the rare cases.

If the US Attorney will not take cases against street criminals who happen to breach one or another section of the federal firearms laws, since those criminals are subject to state prosecution, it is inevitable that federal agents will seek to bring cases against persons who are not street criminals. This temptation is inevitable in the situation. Accordingly, we must look to whether the law is such that it can be abused, and whether the features which permit abuse can be removed.

The fact is that the provisions of the Gun Control Act are extremely susceptible to abuse. First, many of the commands of the gun laws are extremely vague. For example, it is a felony to "engage in the business of dealing in firearms", but there is no way for a firearm collector who occasionally sells or swaps firearms to know when he has crossed the line and is engaging in the business. Secondly, many of the commands of the Gun Control Act are technical; they are not the type of activities that an ordinary individual would suspect might be illegal. For example, probably nine-tenths of our citizens would be suprised to find that they could be committing a federal felony by

giving a firearm to a relative who lived in another state. A handloader who loaded ten cartridges free of charge for a friend woud probably be suprised to learn of his new status as a federal felon—having acted as a manufacturer of ammunition without a federal license.[4] The vague and technical commands of the law are compounded by a third, and perhaps most serious, factor. The vast bulk of the commands of the Gun Control Act of 1968 are mala prohibita, which require no proof of evil motive or intent. Thus the individual who transfers a firearm to a relative in another state, without knowledge that such is illicit and without intent to do any wrong, it nonetheless guilty of a felony. These three factors make the existing federal firearm laws an open invitation to abuse. If the human race were composed solely of angels, of course, the existence of such temptations would be irrelevant — but so would all criminal laws. The supposition of our criminal law is that, at least in certain areas, ordinary citizens may be tempted to harm the public good for their private benefit. S. 1030 merely recognizes that, in accord with the Jeffersonian tradition, the same principle must be applied to those citizens who enforce the law.

Such temptations are quite real and have indeed resulted in harm to many citizens. This is documented in three hearings before the Senate Committee on Appropriations and this Committee's Subcommittee on the Constitution. All of those bodies have heard testimony from numerous citizens who have been harassed or ruined by the abuse of federal prosecutorial capabilities. And if ever there was proof that temptations to abuse for individual or agency ends can be cured only by congressional rather than agency initiative it is in one simple fact; not one agent involved in any of those cases, including one case so aggravated that the director of the prosecuting agency apologized before the Committee to the disabled veteran who was the victim, has ever

[4]Under 18 USC section 921(a) any person "engaged in the manufactuture of ammunition, "not only for sale, but "for distribution," is a manufacturer who must obtain a license and maintain records.

been subjected to any sanctions. Indeed, many such agents were selected by headquarters for promotion in light of their productivity. The other day the Committee heard the testimony of David Berry who, together with 36 other South Carolina citizens, was victimized by "straw man" entrapment. Earlier oversight hearings heard Patrick Mulcahey, whose collection was confiscated despite jury acquittal. The special agent in charge for those cases was recently promoted to Headquarters as a division chief. The earlier hearings also received testimony from Donald Vingino, who described how he and eight other citizens were entrapped in a similar scheme. The special agent who brought those cases is now at headquarters as special agent in charge of the Firearms Branch. Productivity, at the price of abuse, is rewarded. The solution must come from Congress.

If these lives where being ruined in the service of some greater end, the great purpose of crime prevention, the endeavor might at least have an excuse— although not, in a free society, a justification. But the fact is that such efforts have no such excuse. No one seriously believes that the engraved and gold inlaid handguns in Bob Wampler's collection were destined for street criminals. No one seriously contends that the prosecutions of David Moorhead, who testified in the first set of oversight hearings, were necessary to cut off an underworld gun supplier; indeed, Moorhead himself, when approached by an informant with a request for an illegal sale, had called up the BATF's office to report the informant's automobile license. Such cases were brought for personal or agency advancement at the cost of social ends, and not on the excuse of fighting crime.

S. 1030 thus then represents a series of valuable protections against the individual and social harms caused by a vague, technical, and overly broad statute. I would like to discuss briefly for the committee the legal and constitutional context of some of the major features of S. 1030.

Intent. Probably the most vital aspect of S. 1030 is its change in the quantum of intent which the government must prove in order to secure a conviction under the Gun

Control Act. As I have mentioned earlier, simple economics, as well as federalism, demand that only the most extraordinary cases be brought at the federal level. Most provisions of the Gun Control Act require no proof of criminal intent or knowledge. It is enough to prove that an individual committed the proscribed act and was conscious at the time.[5] S. 1030 changes this general intent standard to the highest level of intent, that of a "willful" state of mind, one cognizant of committing evil or illegality.

To appreciate the importance of this change from the standpoint of individual liberty it is necessary to briefly explore this area of the law. At common law, there could be no crime without some manner of intent; indeed, the great eighteenth century commentator, William Blackstone went so far as to assert that the notion of a crime without criminal intent was unknown to the common law. The development of increasing governmental regulations during the late nineteenth and early twentieth century, however, made necessary the enactment of broad regulatory statutes almost invariably enforced as petty offenses or misdemeanors. These statutes were generally upheld in light of the relatively modest penalties provided. With the expansion of governmental regulation, however, such a standard came virtually to be the rule rather than the exception. The existing federal gun laws are typical of the rather late development in this trend. They extensively criminalize behavior which is not immoral or harmful in itself, impose a felony sanction, and yet require no proof of intent. The net result is the rather incongruous situation where it is considerably easier to prosecute a person who innocently transfers a firearm to a relative in another state than it is to prosecute a street criminal who robs or murders that citizen. Such an approach is hardly justified as a rational measure. Paradoxically, I might added, the Gun Control Act <u>does</u> require proof of willfulness in order to revoke a dealers license. As one federal court has observed, this restriction "is intended to provide safeguards from the overzealous

[5] United States v. Petrucci, 486F. 2d 329 (9th Cir. 1973); <u>See also</u> United States v. Freed, 401 U.S. 601 (1973).

application of the act's provisions in relation to license holders and applicants. ...It is consistent with the notice that a new comprehensive scheme of federal regulation should not be employed in such a manner as to destroy those very business concerns which are charged with the responsibility of carrying it out."[6] This rationale, of course, applies with even greater weight when the government seeks to imprison a citizen.

Seizure of Firearms. A second area of great importance concerns the limitations imposed upon confiscation and forfeiture of firearms. The Gun Control Act itself simply provides that firearms used, involved in, or intended to be used in any violation of criminal law may be seized and forfeited. It moreover applies to such procedural standards imposed under the 1934 National Firearms Act, which placed substantial taxes upon transactions in fully automatic firearms and other specialized firearms.

Initially, we must recognize that in this area we skirt the edge of constitutional powers. This is true both at the theoretical and at the practical levels. At the theoretical level, it is exceedingly difficult to accept the legal fiction that a confiscation action is civil rather than criminal and can therefore be brought after a criminal acquittal. When the government brings a court action against an individual, to deprive him of property, in order to punish him for violation of a criminal law, it is very hard to argue that that action is not criminal in nature. Where the violation is one of a revenue statute, it might be possible to argue that the forfeiture is in the nature of a liquidated damage to the government, a civil compensation for an economic wrong. But since the only revenue generated by the Gun Control Act is an occasional $10 licensing fee, which is minute, easily quantified and in the case of a dealer has already been paid, the rationale becomes specious when applied.[6a] In areas such as these, the courts have become increasingly ready to recognize that forfeiture sanctions can be criminal in

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Rich v. United States, 383 F. Supp. 797, 800 (S. D. Ohio 1974). See also Shyda v. Director BATF, 448 F. Supp. 409, 415 (M.D. Pa. 1977).

6a See McKeehan v. United States, 438 F. 2d 739 (6th Cir. 1971)

nature, recognizing them as criminal in the context of fourth amendment violations,[7] and at least in some contexts, fifth amendment violations[8]. Moreover, in an opinion issued only two weeks ago, the U.S. Court of Appeals for the Fourth Circuit found the forfeiture of firearms after the owner's acquittal to be unlawful.[8a] It is appropriate for Congress now to go beyond the minimal standards imposed by federal courts in protecting the rights of United States citizens under the constitution. The injustices which are permitted by the existing scheme of firearm forfeiture are manifold.

First, firearms of substantial value (not a few collections forfeited were valued at over $10,000) were subject to forfeiture on the vague grounds that agents felt they were "intended" to be used in violation, even an unintentional one. Second, since the forfeiture action was not subject to many criminal law safeguards, such as grand jury screening or proof beyond a reasonable doubt, it was an easy avenue to petty harrassment. Third, while the power of the court to mitigate fines and imprisonment assures that criminal penalties may be moderated for technical and minor infractions, courts have no power to mitigate a forfeiture or make it proportionate to the violation: a court which would not levy a $12,000 fine for a minor violation may be forced to uphold a $12,000 forfeiture.[9] Fourth, the government can and has brought forfeiture proceedings against an individual acquitted of all offenses, or even one as to whom a

[7] United States v. 1970 Pontiac GTO, 529 F. 2d 65 (9th Cir. 1976); Bramble v. Richardson, 498 F. 2d 968 (10th Cir. 1974). Earlier cases had, however, taken the opposite view. Martin v. United States, 277 F. 2 d 785 (5th Cir. 1960).

[8] Bramble v. Richardson, 498 F. 2d 968, 973 (10th Cir. 1974).

[8a] United States v. one Assort. of 89 Firearms, No. 81-1055 (4th Cir., Jan 26, 1982). It should be noted that S. 1030 would apply a broader restriction on forfeiture than did the Fourth Circuit in this case. see also McKeehan v. United States, supra.

[9] United States v. One 1955 Model Ford, 261 F.2d 125, (5th Cir. 1968).

grand jury found no probable cause.[10] Finally, the very nature of the procedures invited harrassment and abuse. An individual seeking the return of property valued at less than $2,500, for instance, is required to post a bond to make such a claim for his own property, to secure the government's costs should it win![11] The net result was a legal package which skirted the edge of the Constitution. As one federal court observed in a firearms forfeiture case.

> "The readily observed injustices of certain forfeiture proceedings have also caused the lower courts, while faithfully following the precedents and entering judgements of forfeiture, to speak out with rarely seen vehemence declaring their distaste for the effect of forfeiture on innocent claimants . . . we feel compelled to do away with this enclave of injustice which has persisted in spite of the many and varied attacks upon it."[12]

Given these broad powers, it would hardly be surprising if agents had not misused their seizure and forfeiture powers, either to improve their productivity figures by claiming large seizures, or to harrass those against whom they had a grudge. This is precisely what has happened. Indeed, one particularly abusive practice has become so common as to be practically standard operating procedure. Agents secure an otherwise unexceptional search warrant, but slip in, under the description of items to be seized, the Gun Control Act's general language relating to firearms intended to be used in violation of law. They then proceed to seize every firearm in sight. Quite apart from the fact

[10] Epps V. BATF, 375 F.Supp. 345, 346 (E.D. Tenn. 1973); United States v. 10 Firearms, 444 F. Supp. 305, 307 (N.D. Tex. 1977).

[11] 27 C.F.R. sec. 72.22.

[12] United States v. One 1971 Ford, 346 F. Supp. 613, 618 (S.D. Cal. 1972).

that a warrant of this type constitutes an unconstitutional "general warrant",[13] in that the executing officer makes the very judgement the magistrate ought to be making--which property is intended to be so used--agents executing the warrant never worried about applying its terms, but simply used it as an excuse to clean out a collection or business.

The firearms thus seized were diverted to rather unusual purposes. On occasions, local offices would rush to claim firearms they had just seized as needed "for official use". In the case of one office, I ascertained that they had thus claimed more handguns in two years than the office had agents. Collectors' items were claimed by BATF headquarters, for its reference collection. I attach to my testimony some documentation of such diversions, including that of an ivory and silver inlaid shotgun valued at $10,000, a collection of turn-of-the-century rifles, and a collection of Parker shotguns in various chamberings. Such firearms were hardly likely to be flowing toward criminal uses in any event; now they repose in a government collection, a collection obtained by seizure from their proper owners.

S. 1030 restricts such abuses in several ways. First, only willful violations can support a forfeiture, or issuance of a search warrant. This brings forfeiture into accord with the standard required for criminal prosecution. Second, only those firearms specifically named as used in violation may be seized. This in effect codifies and clarifies the respect due Fourth Amendment interests. Third, in event of acquittal, firearms taken must be returned. Criminal prosecution is the primary remedy of the government; if it fails in its attempt thus to punish the individual, it cannot make a

[13] See Marron v. United States, 275 U.S. 192 (1927) ("As to what is to be taken, nothing is to be left to the discretion of the officer executing the warrant."); United States v. Cangiano, 464 F.2d 320 (2d Cir. 1972) (rejecting warrant for "magazines, photographs and other similar material which are obscene, lewd, lascivious"); United States v. McSurely, 473 F.2d 1178 (D.C. Cir. 1972) (rejecting warrant to seize "seditious matter").

second attempt. Thus S. 1030 represents a major step forward in preventing abuses under the seizure provisions of the Gun Control Act.

"Engaged in the Business" A third area in which S. 1030 makes much-needed changes is in regard to the definition of "engaged in the business." Existing law simply requires that anyone engaged in the business of dealing in firearms obtain a federal license; failure to do so is a federal felony. Since a licensed dealer can sell only from his premises, one who collects and swaps firearms cannot simply obtain a license; to a large extent, collecting and dealing are exclusive activities.

The problem which has arisen under this requirement stems from the failure of Congress to provide a definition of engaging in the business. The courts have developed two tests to fill the gap. One considers a dealer one who "is engaged in any business of selling firearms," "which occupies time, attention and labor for the purpose of livelihood or profit;[14] the other treats as a dealer anyone who has "guns on hand or (is) ready and able to procure them" in order to sell to those who "he" might from time to time conclude to accept as customers."[15] No court has defined any minimum level of sales, business or profit required.

The problem is that these broad tests were primarily drawn from earlier cases defining "engaging in the business" in the context of liquor sales. In the liquor industry, determining dealership is relatively easy. There are few liquor collectors, no liquor shows at which such collectors swap and sell to each other, and so on. Yet firearm enthusiasts do collect and swap without any intent to engage in business for profit motivation. When these broad tests were applied to firearms collectors, the results were predictable. Agents hungry for additional arrests and confiscations simply enticed

[14]United States v. Williams, 502 F. 2d 581 (8th Cir. 1974).

[15]United States v. Jackson, 352 F. Supp. 672, 674 (S.D. Ohio 1972); accord, United States v. Swinton, 521 F.2d 1255, 1258 (10th Cir. 1975).

collectors at gun shows to sell two, three or for guns from their collections, then arrested them on felony charges of engaging in the business without a license. One of the worse examples of this abuse was Patrick Mulcahey, who testified before the Appropriations Committee in its 1980 BATF oversight hearings. Mulcahey was charged, and his collection confiscated, on claims he had engaged in the business by selling three firearms without a license; yet at his trial BATF's expert from its headquarters staff confessed to having sold seventy of his own firearms without a license. In some areas—especially Chicago and Washington, D.C. regions—"engaged in the business" was construed to mean two to three sales; in others four to six; in other regions ten or so. There was no way of knowing what was lawful and what was not, and many collectors suffered felony sanctions for guessing wrong. (And guess they must; courts have held that advice on a lawyer's opinion as to what constitutes engaging in the business is no defense!)

Indeed, enforcing agencies have gone out of their way to keep this definition unclear, apparently in order to ensure that a maximum number of citizens will inadvertently violate its terms. The definition actually dates from the 1938 Federal Firearms Act, and as far back as 1965 its enforcing agency (then the IRS) promised the House Ways and Means Committee to promulgate regulations under which "a gun collector disposing of his collection would not have a problem,"[16] This was not done. Thirteen years later, in a letter dated April 19, 1978, the enforcing agency was informing Representative John Ashbrook that:

[16]Hearings on Proposed Amendments to Firearms Acts before the House Comm. on Ways and Means, 89th Cong., 1st Sess., at p. 42-43 (1965).

> Since the term 'engaged in the business' is not defined in the law, and since the courts have determined that the term must be decided on a case basis, it cannot be included in published regulations... It also follows that the standard changes, not only from one year to the next but on a case by case basis.

A year later the agency announced that it was considering defining the term by regulation.[17] The comment period on the regulation closed April 17, 1980. In the year and a half which have passed, no definition has been forthcoming. It is apparent that nothing but Congressional action will give a definition which does not change, "not only from one year to the next but on a case by case basis." No citizen should be left in perpetual doubt as to whether his acts may be completely proper or subject him to a felony conviction.

S. 1030 clarifies this section of law by providing a definition of engaging in the business in accord with actual practices in this area, excluding hobbyists who sell and swap as part of their hobby and not primarily as a matter of commerce.

These benefits, S. 1030 secures without any significant social costs. The objections to this bill rest upon specious objections raised by the National Coalition to Ban Handguns. I will deal briefly with those objections here.

The general position of NCBH with regards S. 1030 begs the obvious question: what has the prosecution of Richard Boulin (for doing, with lawful intent, what the head of a federal agency himself says is lawful), the confiscation and withholding of Robert Wampler's engraved and gold inlaid museum pieces (withheld two years after charges were dropped), or the harrassment of Paul and Billi Hayes after their acquittal by jury, got to do with "the escalating problem of handgun violence in our nation"? The logic which claims that since some persons use firearms for social harm, Richard Boulin ought

[17] 44 Fed. Register 75186 (Dec. 19, 1979); 45 Fed. Register 20930 (Mar. 31, 1980).

to be imprisoned, is not only a strain to the intellect and any sense of justice, but is precisely the reasoning pattern characteristic of racism, bigotry and totalitarian thought.

NCBH's objections to S. 1030 are no more reasonable. Each can be dealt with in turn.

1. Limiting Routine Compliance Inspections. The bill actually provides that the enforcing agency, may when it has "probable cause to believe a violation of this chapter may have occurred, and that evidence thereof may be found on the premises, enter during business hours the premises (including places of storage)" of a dealer "for the purposes of inspecting or examining (1) any records or documents required to be kept...and (2) any firearms or ammunition kept or stored..." As it is, the agency is not required to obtain a warrant, which means that even with S. 1030 a firearm dealer will have less protection against unreasonable search and seizure than any other citizen. Federal law enforcement resources are limited, and this allocates them rationally. If a dealer's firearms wind up in the hands of a prohibited buyer, there will be probable cause to inspect, every time such a thing occurs. If a dealer's firearms never wind up in the wrong hands, why should federal agents' time be wasted on him? Presumably, this is not the section NCBH has in mind when it claims S. 1030 "would inevitably result in more handgun-related deaths" and would "gut the Gun Control Act."

2. Dealer's Personal Collection. This provision would hardly create a major loophole. If a dealer in fact sold inventory guns as though part of his collection, the result could be shown from his inventory records, which must reflect not only sales but also acquisitions and inventory. Once again, this cannot be the section NCBH has in mind.

3. Relief from Disability. Existing law states that a person convicted of a crime punishable by more than a year's imprisonment may apply to the Secretary for relief, and the Secretary may grant this if his record and reputation indicate he is unlikely to be a danger. S. 1030 retains this decision-making power and simply reverses the burden: it

should be granted unless his record and reputation indicate otherwise. This is hardly a major change. Currently, applicants must submit a form outlining employment, references and record, and the Secretary designates an agent to interview police, prosecutors, and references. Most of the applications are granted, because most are bona fide. NCBH seems to believe that (1) a real criminal will ask federal agents to investigate him; (2) somehow the agent will be unable to meet even the vague standard of "record and reputation". Bluntly, if a check with police and prosecutors can find no evidence of an improper "record or reputation", the individual ought to obtain relief. This section also seems unlikely to "gut the Gun Control Act."

4. Barring revocation for dealer acquitted of all charges. S. 1030 would provide that where a dealer is cleared of criminal charges, the same allegations cannot thereafter be used to bring a license revocation action. This seems simple justice. In any event, it will hardly "gut the Gun Control Act." Last year the enforcing agency informed the Senate Committee on Appropriations that "An exhaustive search of our files has indicated that, in fiscal year 1979, ATF brought administrative charges against a dealer who was acquitted of criminal charges on only two occasions. The Phillips case was one of them. In both cases an administrative decision was reached in favor of reissuing the license." This section likewise must not be the one NCBH had in mind.

5. Requiring proof of a willful violation. S. 1030 requires that criminal charges be based on a willful violation. NCBH protests that the prosecution "should not be put to this often impossible burden." Most current firearm cases are based on undercover approaches: if agents cannot obtain an indication, in a controlled situation, that the defendant intends to break the law, there seems little reason to impose a federal felony conviction. Curiously enough, willful intent is exactly what the law requires when a Treasury law enforcement agent is charged with a civil rights violation! (26 U.S.C. 7214(a)(1), banning "willful oppression under color of law" by Treasury agents). What is a proper protection for the government's own agents is a proper protection for we

citizens. This, too, cannot be the section that will "inevitably result in more handgun-related deaths."

6. Attorneys' Fees. S. 1030 requires reimbursement of legal expenses where an individual must sue for return of illegally-held property, and makes it optional where the government's actions are brought improperly or without legal foundation. If NCBH seriously believes that enforcement agencies rarely engage in such malpractices, it should have no problem with this seciton. There seems little reason why claimants should recover such for Truth-in-Lending, Security Act, and discrimination cases, but be denied such after ruinous oppressions. This cannot be the section which "guts the Gun Control Act."

7. Mandatory sentences. Existing law provides an additional sentence for using or carrying "unlawfully" a firearm during a federal felony. S. 1030 makes this a mandatory (i.e., no probation or parole) sentence for using a firearm in such. NCBH protests that "so long as a felon does not actually shoot anyone", he has not "used" a gun in crime! In the event that NCBH finds a dictionary too inconvenient, they migh consult U.S. v. Moore, 580 F. 2d 360 (9th Cir. 1978), upholding a conviction for "use" where a robber was apprehended and found with a firearm even before beginning that actual crime. If imposing mandatory time and denying parole to such persons will "gut the Gun Control Act" in NCBH's opinion, then its judgment is as poor as its legal research.

8. Interstate firearms sales. In hopes of preventing interstate evasion of state gun laws, existing law simply bans all interstate transfers. S. 1030 continues the ban, unless the sale would be legal in both states and localities. Thus a resident of North Dakota could sell to a resident of South Dakota, but not to one of the District of Columbia or New York (unless all formalities required by those jurisdictions had been complied with). Since the whole purpose was to prevent evasion, this is hardly an

unreasonable exception. NCBH objects that dealers could not know the laws of other states. They apparently are unaware that the government now assembles these in a volume entitled "Your Guide to Firearm Laws", and distributes a copy to each licensed dealer.

If the stance of the National Coalition to Ban Handguns seems somewhat immoderate and unreasonable, it is at least an improvement over earlier positions. During these hearings, for instance, they limited their claims about Paul and Billi Hayes to a statement that a court had ruled the seizure permissable (immediately after which the U.S. Attorney returned the guns in any event). In earlier hearings before the Subcommittee on the Constitution, NCBH lobbyist Micheal Beard was less moderate. There, he proclaimed that the Hayes were in fact guilty, notwithstanding the jury verdict in their favor, asserting that transcripts released to NCBH by the prosecuting agency, and supposedly reflecting conversations with the undercover agents, demonstrated this. He further asserted that the transcripts and tapes were not given to the jury, broadly hinting that this was the reason for the acquittal. At the time I replied, demonstrating from court records that "in fact, virutally every one of these statements is at best a misrepresentation and at worst blatantly false." I attach a copy of the hearing record demonstrating the case.

In addition to making these statements before legislative Committees, NCBH released statements slandering the Hayes to a variety of media in the Hayes' home area. To my knowledge, despite this documentation that NCBH's attacks were false and involved use of fabricated transcripts (presumably fabricated by the agents, one might observe) NCBH has made no effort to inform the media of this or to repair the damage caused the Hayes' reputation.

One can only observe that it is precisely this type of approach that gave McCarthyism a bad name. Apparently, NCBH feels no fate too extreme for anyone who would dare criticize their pet governmental agency.

Mr. Chairman, although I speak here as an individual and not on behalf of any group, I am proud to be a member both of the American Civil Liberties Union and of the National Rifle Association. I do not see S. 1030 as solely or even primarily a firearms issue. It is instead a question of civil liberties-- civil liberties which happen to belong to millions of American citizens who own and use firearms in a responsible manner. I cannot speak for the groups which have or may appear in opposition to its principles. I do not know whether in their hearts they oppose the extension of S. 1030's premises--of carefully limiting and defining acts for which our citizens may be prosecuted, of preventing unreasonable searches and seizures, of allowing reimbursement for costs imposed by an abusive prosecution--to all citizens, or whether they oppose recognition of these civil liberties only when firearm owners would benefit. I do know that I would reject either view. I believe that the government has a duty to define criminal acts narrowly and precisely, so that citizens may know how to comply with the law. I believe that the government, with its immense resources and capacity to harrass, ought to be allowed one opportunity and no more to impose punitive sanctions upon a citizen. And I believe that persons who would recognize these principles generally, but ignore them when firearm owners, minority groups, or any other persons whom they dislike invoke those principles, are guilty of a dangerous hypocricy.

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amounts to compounding the initial violations with the crime of extortion. But apparently the laws governing compounding felonies and extortions do not apply to BATF, at least in its own mind.

The logical question arises: If the Hayes were involved in all the criminal acts outlined by the National Coalition, No. 1, why did the jury acquit them on all counts? No. 2, why did BATF give up the attempt to revoke their license?

The NCBH's answer is simplistic. The Government's "most probative evidence," in their language, was excluded on purely technical grounds—the grounds being the BATF had re-recorded certain tapes and thus broke the chain of evidence, and in particular was thus barred from using transcripts which show the alleged illegal intent of the Hayes.

In fact, virtually every one of these statements is at best a misrepresentation and at worst blatantly false.

First, this "most probative evidence," the tapes, was not in fact excluded. One of the five tapes was excluded at the trial. The remaining four were played to the jury before the jury chose to acquit them.

Second, that one tape was not excluded on technical grounds. The objection to it had nothing to do with the chain of evidence. The grounds of exclusion were purely substantive; namely, the quality of the tape.

Third, the transcripts, which is what NCBH quotes from—not the tapes, but the Government-prepared transcripts—were not even offered in evidence by the prosecution because the prosecution conceded they might not reflect the truth.

And fourth, the BATF transcripts quoted are in fact for the most part a fabrication, do not reflect what the court reporter took down from the tapes as they were played at trial.

Permit me to document this by reference to the transcripts of trial of January 1, 1980. At page 151 the defense attorney begins objecting with reference to the transcripts stating:

> I also state for the record, Your Honor, that these transcripts are totally inaccurate. There are great portions left out and added and errors. Interpretations from what I could hear from the darn tape were totally erroneous as they were put down.

On page 146:

> I would like the record to reflect, if the court has been following the transcript, that the transcript and the tapes are at great disparity.

Of course, this might just be the opinion of the defense attorney. On page 150, the transcript shows, however, the opinion of the U.S. prosecutor, Mr. Smith. The court had just finished protesting it had not been furnished with a copy of the transcripts. Mr. Smith explains:

> We showed you, tried to show you last week, showed you yesterday, the transcripts of the tapes. Now we are not using the transcripts for the jury because the transcripts—there is always a problem about whether transcripts accurately show what is on the tape or not. We don't want to get into that problem.

Nowhere in the transcript of the trial does the prosecutor move for the admission of those transcripts.

As far as tape No. 1, which was excluded, the judge makes it clear that his ruling is based upon the quality of the tape, not upon any chain of evidence problem. The court, on page 151:

I feel sorry for you. You want to go ahead and convict him but can't get down there and testify and say something, and I don't think that tape is saying anything.

On page 152, the judge goes on and adds:

They are not going to use that to convict somebody with. I wouldn't. You wouldn't.

Mr. Smith, the prosecutor:

Judge, whether I would or you wouldn't is—well, none of us know.

The court:

Well, the Circuit Court wouldn't. Let me put it that way.

Eventually the remaining four tapes were admitted. The court reporter, who was after all a trained official, selected by a Federal court for the specific purpose of transcribing verbal testimony and reducing it to writing, attempted to transcribe what was played on the tapes. The transcripts as recorded by the court reporter vary substantially from the NCBH transcriptions. I will prepare for the subcommittee, if it desires, a comparison of the two.

I have gone through an earlier statement received from the National Coalition to Ban Handguns in connection with the hearings before John Conyers. Contained in that, the same quotations which were put into the record today I have gone through and interlineated showing which portions of those quotations were found to be inaudible or reflected as blank spots on the tape.

Virtually every incriminating statement relied upon by the national coalition in this statement is either a blank spot on the tape or is totally inaudible. There is even one statement which was gotten down by the court reporter but which ATF carefully omitted from its transcript. This shows that the supposed nonresident agent was supposedly from another State; namely, Texas. The BATF transcript states something to the effect that he has to go back to Texas. This is followed by an inaudible statement. The original statement, as gotten down by the court reporter, shows that was inaudible was "I have been working down here," which was presumably omitted from the BATF transcript because it would tend to demonstrate he was not in fact a nonresident.

I believe it is this manner of, if you will, coverup even to its own supervisors, in which the agents transcribing these tapes conceal what is actually said, which is responsible in large part for the illegal BATF activities and their perpetuation.

[The documents referred to follow:]

> need not be recorded in the business records and a form 4473 executed by the purchaser would not be required.

Accordingly, even if these alleged transcripts were correct, and NCBH's conclusions correct, Boulin was prosecuted for an offense which the director of BATF maintains is completely lawful.

It is regrettable that NCBH, which claims its members "have long histories of defending the civil rights of friend and foe alike," and which supposedly "did not take the charges against BATF lightly," has chosen to demonstrate its concern by a cowardly and vicious attack upon two families who have been ruined, economically and emotionally, by illegal search, falsified statements, and malicious prosecution by BATF. It is noticeable that, while these individuals are ruined for unintentional technical violations (which even the head of BATF maintains are legal), NCBH and its officers enjoy immunity from such harassment. (I attach documentation, demonstrating that when their officials were involved in a knowing violation of the firearms laws, the government refused to undertake even an investigation: quite a contrast to its conduct toward Richard Boulin). Perhaps if NCBH did not enjoy this remarkable, extralegal, protection it might be able to deal "at arm's length" with the government and examine in a geninely impartial manner the allegations being made. As it is, their conduct is more appropriate to an apologist for state oppression than to a civil libertarian.

PART THREE:
A BRIEF COMMENT ON THE MANDATORY SENTENCING CONCEPT

The following is an abstract of "The Potential for Civil Liberties Abuses in Enforcement of Handgun Prohibition," by David T. Hardy, ACLU member and NRA legal consultant, and Judge Kenneth Chotiner, then Vice President of the ACLU of Southern California and a Director of NRA. The article is reproduced as a chapter of "Restricting Handguns: The Liberal Skeptics Speak Out," Don Kates, editor.

Advocates of handgun restriction or prohibition have uniformly ignored, or glibly evaded, the legitimate civil liberties difficulties associated with their proposals. These are no minor concern, and merit serious debate. A 1977 survey conducted for the California Attorney General, for instance, estimated that 2.3 million Californians own handguns, and 6 percent of women and 11 percent of men owners had used them for self-protection. For civil libertarians to gloss over infringements of these individuals' rights is not only inconsistent, but invites a backlash on the part of millions of citizens who may thereby come to consider the civil libertarian cause as hypocrisy rather than a common cause.

Enforcement of a handgun ban is no simple matter. Barely .02 percent of handguns are used in homicides in any given year, and this .02 percent are in the hands of individuals least likely to voluntarily comply. No statute of any kind, much less one aimed at regulatory possessory acts, has come close to 99.98 percent enforceability. The only alternative to actual case-by-case enforcement is deterrence; and since many handguns are kept for self-defense, deterrence requires making citizens in high-crime areas fear the government more than street crime. Hardly a position civil libertarians can tolerate, much less endorse. Nor are these the only problems.

Discriminatory Enforcement. The proposed initiative includes a mandatory sentence (no probation or parole) for carrying a handgun without a permit. This would apply regardless of the motive in carrying, to a woman who carried in self defense as well as to a rapist. (One may judge for oneself which would be disarmed by firearm restrictions in any event). This is modeled after similar legislation in Massachusetts. Yet a study of the first year under the Massachusetts law found that 66 percent of those given mandatory time under it were black or hispanic; only a third were anglo. This tallies with gun law results in other areas; Chicago recently reported 1,176 arrests of whites and 7,636 of blacks under its weapons restrictions—a seven-to-one ratio! This was twice the three-to-one ratio of loitering arrests, traditionally abused by the Chicago police. The main effect of such mandatory sentencing is to give a convenient way to imprison minorities without proof of crime or evil motive.

Who Are the Victims of Firearm Law Enforcement? The first major case under the Massachusetts law was *Commonwealth* v. *McQuoid*. The appellant was a young man who owned a pistol, with a permit to own, but whose carrying permit had expired. He desired to purchase a class ring, but he and his wife lacked the money. While driving to a gun dealer to sell his pistol he was stopped and the firearm seen. The resulting one year sentence without probation or parole was upheld on appeal, an appeal in which the Civil Liberties Union of Massachusetts had joined.

McQuoid was not unique. One of the most recent cases under the Washington, D.C. handgun ban concerned Sam Williams, a retired black policeman who was delivering papers when accosted by two robbers whom he believed meant to kill. Williams shot one and was himself arrested for illegal possession of a handgun: the robber he had shot was found to be on pretrial release on charges of a contract murder of a 62-year-old man. The first person arrested under New York's mandatory sentence was William Jordan, a trucker who had pulled a handgun to break up what he believed to be a rape attempt.

These are typical rather than extraordinary. Judge David Shields of the Chicago "gun court" testified before a House committee in 1975:

> "I think the most striking experience I can take away from the gun court and the persons exposed to gun court...is with respect to the kinds of people that appear there as defendants. For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, I mean this is their very first arrest of any kind. Many of them are old people. Many of them are shopkeepers, persons who have been previous victims of violent crime."

Query: does anyone think that mandatory imprisonment of persons such as these, of citizens like McQuoid, Williams, and Jordan, is desirable, or will help with the problem of street crime? Yet arrests under the New York mandatory sentence for carrying without a permit are averaging 800 a month!

What is the benefit? Some might maintain such imprisonments could be justified since "you can't make an omelette without breaking some eggs." Apart from the calloused nature of such a view, it begs the question: what, precisely, will be the beneficial effects expected? Washington, D.C.'s murder and robbery rates had fallen in the two years *before* it adopted handgun prohibition; they *rose* 18 percent and 24 percent in the two years after. Economist Douglas Murray, in a multiple regression statistical study printed in *Social Problems* (1975), tested seven types of handgun laws and found "the severity of handgun control laws has no significant effect on the violent crime rates of the 50 states." Here, the California Department of Justice, after studying each and every violent death during the first half of 1975, concluded that a gun robbery was no more likely than a non-gun robbery to result in death, that concealability was not a factor in most homicides, and that "restrictions placed on handgun ownership, without comparable restrictions on long guns, would likely result in an increase in the use of long guns in all violent deaths." So much for handgun prohibitions.

Conclusion. In light of this evidence, advocates of handgun restrictions bear a strong burden of demonstrating, clearly and with evidence: (1) how many arrests would be necessary to their programs; (2) a racial and sexual beakdown of arrestees, based on experience under similar laws; (3) the feasibility of imprisoning such arrestees for mandatory terms; (4) which classes of offenders might be released in order to permit such imprisonment; and (5) the basis upon which they assert that a significant crime reduction would follow, and would offset any potential increase caused by such releases. A responsible approach to civil liberties considerations demands no less.

U.I.# 3213-11-76-4503P

	INVENTORY	COND.	APPR.VALUE
1.	Luger Pistol, 9mm, 1918 Model, marked ERFURT, Ser.# 35	GC	$ 120.00
2.	Luger Pistol, 9mm, 1917 Model, marked DWM, Ser.# 9170	GC	120.00
3.	Hungarian Pistol, .380 cal., semi-automatic, marked FEMARU-FEGYUER, Ser.# 233057	GC	50.00
4.	Mauser Pistol, 9mm, Ser.# 11410, with attached shoulder stock	GC	150.00
5.	Mauser Pistol, 9mm, Ser.# 78386, with attachable shoulder stock	GC	150.00
6.	Mauser Pistol, 9mm, Ser.# 181087, with shoulder stock	GC	150.00
7.	Mauser Pistol, 7.63 cal., Waffen Fabrik/Obendorf, Ser.# 921290, with attachable shoulder stock	GC	150.00
8.	Mauser Pistol, 9mm, Ser.# 339088, with attachable shoulder stock	GC	150.00
9.	Mauser Pistol, 7.63 cal., Ser.# 9953	GC	150.00
10.	Luger Pistol, .30 cal., marked DWM, Ser.# 19696	GC	120.00
11.	Luger Pistol, Model 1937, marked S-42, Ser.# 9612	GC	120.00
12.	Luger Pistol, .30 cal., marked DWM, American Eagle, Ser.# 6488	GC	150.00
13.	Smith & Wesson Revolver, 44 magnum, Ser.# 168765	GC	200.00
14.	Smith & Wesson Revolver, .32 cal., 6 shot, Ser.# 63176	GC	80.00
15.	Colt Revolver, Automatic,Government Model 45, Ser.# 911466	GC	100.00
16.	Colt Revolver, .38 cal., Officer Model, Ser.# 532592	GC	90.00
17.	Colt "Ace" Rifle, cal. .22 long, semi-automatic, Ser.# 7328	GC	100.00
			$ 2150.00

EXHIBIT "A"

CONDITION			APP. VALU
GC	1.	One Winchester model 70, .300 H & H magnum rifle, bearing serial #211544 with scope	325.
GC	2.	One Marlin model 782, .22 WMR rifle bearing S/N 25621479 with scope	45.
VGC	3.	One Browning .32 caliber semi-automatic pistol, S/N 245271	100.
VGC	4.	One Colt Officer's model .38 caliber revolver, S/N 462425	110.
EC	5.	One Mauser 9mm semi-automatic pistol, S/N 11006637	250.
PC	6.	One Iver Johnson .38 caliber revolver, S/N 52690	15.
GC	7.	One Colt Police Positive .32 caliber revolver, S/N 54779	90.
VGC	8.	One Winchester model 92 .38 WCF lever action rifle, S/N 948696	200.
PC	9.	One Kessler Arms Corp. 12 gauge bolt action shotgun, bearing no serial number	[illegible]
GC	10.	One Winchester model 70 .220 swift bolt action rifle, S/N 314117	300.
FC	11.	One Remington 12 gauge double barrel external hammer shotgun, S/N 18374	300.
GC	12.	One Remington Gamemaster .35 Rem. pump action rifle, S/N 9811	170.
GC	13.	One Winchester model 41 .410 gauge bolt action shotgun, no serial number	45.
GC	14.	One Remington woodmaster model 81 .30 caliber rifle, S/N 14956	150.
GC	15.	One Auschutz 20 gauge double barrel shotgun, S/N 362496	250.
FC	16.	One Savage Arms 16 gauge double barrel shotgun, S/N 374120	125.
EC	17.	One Winchester model 70 7mm bolt action rifle, S/N 25791	[illegible]
F	18.	One Savage model 1893 .30-30 caliber lever action rifle, serial #273409	[illegible]
VGC	19.	One Winchester .30 caliber lever action rifle, S/N 20126 marked National Guard of Colorado_	300
GC	20.	One Sako L46 .222 magnum bolt action rifle, S/N 54916 with scope and sling	300
GC	21.	One Daisy .22 caliber rifle, S/N A031078	3
GC	22.	One LeFever .410 gauge double barrel shotgun, S/N 259503	[illegible]
GC	23.	One Parker Brothers 12 gauge double barrel shotgun, S/N 182562	450
PC	24.	One Stevens 12 gauge single barrel shotgun, no serial number	[illegible]
FC	25.	One Winchester model 92 .25-20 lever action rifle, S/N 968452	145.

EXHIBIT "A" (con't.)

CONDITION			APP. VALUE
GC	26.	One Ithaca 12 gauge single barrel shotgun, serial #344086T	$50.00
GC	27.	One Winchester model 1886 .45 90 WCF lever action rifle, S/N 83840	300.00
GC	28.	One Remington model 48 .20 gauge shotgun semi-automatic serial #3847048	125.00
FC	29.	One Savage model 1899 .25-35 caliber lever action rifle, S/N 107594	75.00
EC	30.	One Dubiel Arms .257 Roberts bolt action rifle, S/N 1657	300.00
GC	31.	One Remington Arms .300 H & H magnum bolt action rifle, S/N 238678 with scope	350.00
FC	32.	One Remington Gamemaster model 760 pump action rifle .35 caliber, S/N 55501	150.00
FC	33.	One Belgian made .45 caliber revolver, S/N 7759	50.00
EC	34.	One Mann's patent 6.35mm semi-automatic pistol, no serial number	200.00
PC	35.	One Acierfondu 7.65mm revolver bearing no serial number	75.00
GC	36.	One H & R semi-automatic .32 caliber pistol, S/N 30605	125.00
GC	37.	One Marlin .40 caliber lever action rifle, S/N 10558	300.00
FC	38.	One Savage .22 caliber pump action rifle, S/N 31.758	100.00
GC	39.	One Savage model 99 .243 lever action rifle, S/N 909295 with scope and sling	175.00
PC	40.	One Western Auto Supply Revelation model 105 .22 bolt action rifle, no serial number with scope and sling	50.00
GC	41.	One Winchester model 37 .12 gauge single shot shotgun, no serial number	125.00
PC	42.	One Browning .22 caliber semi-automatic rifle, no serial number	200.00
FC	43.	One Savage Supersporter 250/3000 bolt action rifle, S/N 6192	100.00
EC	44.	One Remington .410 gauge model 11-48 semi-automatic shotgun, S/N 4138468	165.00
GC	45.	One Webley Mark VI .455 revolver, S/N 248632	150.00
GC	46.	One ZBROJOVKA BRNO .222 bolt action rifle, S/N 14368 with scope and sling	175.00
VGC	47.	One Winchester .35 whelan bolt action rifle, S/N 410346 with scope rings only	100.00
PC	48.	One Fabrique d'armes .25 caliber semi-automatic pistol, S/N 38425	40.00
GC	49.	One Remington Scoremaster model 511-X .22 caliber bolt action rifle, no serial number	75.00

CONDITION	EXHIBIT "A" (con't.)	APP. VALUE
GC	50. One Winchester model 37 .20 gauge single shot shotgun, no serial number	
GC	51. One Winchester model 12 20 gauge pump shotgun, S/N 341485	
GC	52. One LeFever 12 gauge double barrel shotgun, no serial number	
VGC	53. One Winchester caliber .45-70 lever action rifle, S/N 93098	
GC	54. One Marlin model 93 lever action rifle .32 caliber, S/N L853	
GC	55. One Abercrombie & Fitch 410 gauge double barrel shotgun, S/N 5026	
FC	56. One Parker 12 gauge double barrel shotgun, S/N 29525	
GC	57. One Savage model 1899 .22 cal. lever action rifle, S/N 180845 with scope	
GC	58. One Fabrica Aguirre V. Aranyabel 12 gauge double barrel shotgun, S/N 248647	
FC	59. One Savage model 1899 .30-30 lever action rifle, S/N 235889	
FC	60. One Sako Forrester .243 bolt action rifle, S/N 31392	
EC	61. One Weatherby .240 magnum bolt action rifle, S/N P51827 with scope and sling	
EC	62. One Sako .308 bolt action rifle, S/N 102649	
GC	63. One Fox Sterlingworth 20 gauge double barrel shotgun, S/N 259950	
VGC	64. One Winchester model 71 .348 caliber lever action rifle, S/N 22504	450.
GC	65. One Winchester model 1886 .33 WCF lever action rifle, S/N 146118	
[illegible]	66. One Springfield 1898 .30 caliber bolt action rifle, S/N 185875	
[illegible]	67. One Winchester model 61 .22 caliber pump action rifle, S/N 188592	
FC	68. One Winchester .30-30 lever action rifle, S/N 144139A	
[illegible]	69. One Remington .35 caliber pump action rifle, S/N 65782	
FC	70. One Remington 16 gauge double barrel shotgun, S/N 125664	
FC	71. One Winchester model 94 .32 caliber lever action rifle, S/N 1073271	
EC	72. One Navy Arms Rolling Block .357 magnum pistol, S/N 42	
EC	73. One Parker .20 gauge double barrel shotgun, S/N 149775	
VGC	74. One Parker 12 gauge double barrel shotgun, S/N 176882	

EXHIBIT "A" (con't.)

CONDITION		APP. VALUE
GC 75.	One Ansley Fox 16 gauge double barrel shotgun, S/N 301579	325.00
GC 76.	One ~~U.-H.~~-Boid 12 gauge double barrel shotgun, S/N 1043 (external hammers)	1500
VGC 77.	One Marlin .32 caliber lever action rifle, S/N 81959	150.00
GC 78.	One Remington 12 gauge double barrel shotgun, S/N 84449	200.00
GC 79.	One Winchester model 24 12 gauge double barrel shotgun, S/N 69948	100
GC 80.	One L C Smith 20 gauge double barrel shotgun, S/N 11856R	450.00
EC 81.	One Winchester 7.62 model 1895 lever action rifle, S/N 220070	500.00
GC 82.	One Savage lever action .22 caliber rifle, S/N 180558	175.00
FC 83.	One Winchester model 1911 S.L. 12 gauge semi-automatic shotgun, S/N 39307	60.00
G 84.	One Winchester model 1902 .22 caliber bolt action rifle, no serial number	40.00
GC 85.	One Winchester model 1895 .30-06 lever action rifle, S/N 68010	350.00
VGC 86.	One Remington Fieldmaster model 572 pump action .22 caliber rifle, S/N 1468178	100.00
[illegible] 87.	One Springfield .22 caliber bolt action rifle, S/N 8289	[illegible]
GC 88.	One Remington model 24 .22 caliber semi-automatic rifle, S/N 107035	175.00
VGC 89.	One Winchester model 55 .22 caliber semi-automatic rifle, no serial number	100.00
FC 90.	One Remington model 550-1 .22 caliber, semi-automatic rifle, no serial number	40
VGC 91.	One Winchester model 1894 .25-35 WCF lever action rifle, S/N 411156	175
VGC 92.	One L. C. Smith 12 gauge double barrel shotgun, S/N RE129566	300
FC 93.	One 7mm bolt action rifle, S/N RA60210	75
FC 94.	One H & R Topper model 158 .30-30 single shot rifle, S/N 1158 with scope	35
EC 95.	One Marlin Glenfield model 75 bolt action .22 caliber rifle, S/N 72411792	95
GC 96.	One Winchester model 70 .375 magnum rifle bolt action, S/N 27733	450.00
FC 97.	One Stevens model 66 .22 bolt action rifle, no serial number	10.00
GC 98.	One Parker 16 gauge double barrel shotgun, S/N 67134	450
VGC 99.	One Winchester model 53 .25-20 WCF lever action rifle, S/N 4928	125

EXHIBIT "A" (con't.)

CONDITION			APP. VAL.
GC	100.	One Sako Firmbear .264 magnum bolt action rifle, S/N 3911	
GC	101.	One Standard Arms .35 caliber pump rifle, S/N 7842	130
VGC	102.	One Daisy .22 caliber rifle, S/N A030471	
FC	103.	One Mauser .32 caliber semi-automatic pistol, S/N 239363	
GC	104.	One Winchester model 1904 .22 caliber bolt action rifle, no serial number	
FC	105.	One Iver Johnson 12 gauge single shot shotgun, S/N 44175	
GC	106.	One Marlin model 39 Century Ltd. .22 caliber lever action rifle, S/N 10469	
FC	107.	One Winchester bolt action model 1902 .22 caliber rifle, no serial number	
FC	108.	One Remington model 760 Gamemaster .257 Roberts pump rifle, S/N 213455 with scope	
GC	109.	One Fox Sterlingworth 12 gauge double barrel shotgun, S/N 83040	
GC	110.	One Savage 16 gauge double barrel shotgun, S/N 372689	
FC	111.	One Union Arms 12 gauge pump shotgun, S/N 200521	
FC	112.	One Ithaca 20 gauge double barrel shotgun, S/N 302159	
FC	113.	One Marlin model 1893 .30-30 lever action rifle, S/N 174814	
FC	114.	One Savage model 29A .22 caliber pump rifle, S/N 53924L	
GC	115.	One Remington model 760 Gamemaster .35 caliber pump rifle, S/N 29566	
FC	116.	One S & W .32 caliber break open revolver, S/N 34151	15.
VGC	117.	One Wurzer & Peterson 7mm bolt action rifle, S/N 188402	100.
GC	118.	One Winchester model 1892 .38 WCF lever action rifle, S/N 857764	
FC	119.	One EIG double barrel 38 special Derringer, S/N 9581	
FC	120.	One Winchester model 37 .410 gauge single shot shotgun, no serial number	100.
GC	121.	One Winchester lever action 12 gauge shotgun, S/N 5550	
VGC	122.	One Winchester 20 gauge model 21 double barrel shotgun, S/N 4405	900
GC	123.	One Remington pump action .25 rem. rifle, S/N 84598	
GC	124.	One Winchester model 12 12 gauge pump shotgun, S/N 1257484	
GC	125.	One Winchester model 24 16 gauge double barrel shotgun, S/N 73252	
VGC	126.	One Winchester model 37 .410 gauge single shot shotgun, no serial number	115.

TESTIMONY OF CONGRESSMAN MIKE SYNAR BEFORE THE SENATE JUDICIARY COMMITTEE . FRIDAY, DECEMBER 11, 1981; HEARING ON S. 1030 AND H.R. 3300, THE FEDERAL FIREARMS REFORM ACT OF 1981

I would like to thank the Committee for this opportunity to present my view in support of S. 1030 introduced by Senator McClure and H.R. 3300 introduced by my colleague in the House, Mr. Volkmer. As one of the five primary House sponsors of the original version of this bill which was introduced in 1979, I am pleased to see the Committee proceeding on this legislation.

The primary thrust of this legislation is to amend the 1968 Gun Control Act to change its most onerous provisions and to institute guarantees of gun owners' civil liberties which were ommitted from the Act. This in turn will focus enforcement efforts on the violent criminal rather than the law-abiding citizen. As an Oklahoman who was raised to respect the right to own firearms and to believe in punishment for those who abuse that right, I wholeheartedly support enactment of the Volkmer-McClure legislation.

The mandatory sentencing provision of this legislation is one of the key elements of the bill. It will add teeth to the current provision by denying a suspended sentence, parole, probation or furlough for the mandatory period. The charges proposed by Volkmer-McClure will force the convicted felon to accept responsibility and the resulting consequences for this act. No criminal will take seriously a sanction which provides an easy means of avoidance.

The current Gun Control Act is not a coordinated piece of legislation, but rather, a hodgepodge of proposals which resulted in a vague, often contradictory, uncohesive piece of law. For example, under current law, four classes of persons are prohibited from purchasing or receiving firearms (sec. 922), and six classes of persons are forbidden possession of firearms (sec. 1201) but only two of these classes overlap. And even the overlapping classes are defined in different language. The result is that most of the groups forbidden receipt of a firearm are not forbidden possession, and vice versa. Paradoxes such as this will be remedied by adoption of this legislation.

A criminal law should contain only provisions which will serve a valid crime-fighting purpose. Viewed from this perspective, the current requirement of record keeping for ammunition should be eliminated. Even the agency enforcing the firearms laws, B.A.T.F., has admitted that ammunition record keeping is of no measurable crime-fighting value. With billions of rounds sold each year, the paperwork burden on our small business community is enormous. S. 1030 would remove this worthless burden.

Civil liberties problems contained in the 1968 Act are also addressed in this legislation. One important provision would require enforcement agents to have reasonable cause to believe a violation has occurred in order to enter the premises of a firearms dealer for a records search. It should be remembered that a firearms dealer, like any other citizen, is entitled to the protection of the Fourth Amendment against search and seizure without cause. If an ordinary business man is entitled to this protection(when an O.S.H.A. inspection is undertaken, for example),I see no reason why a person who happens to make his living selling firearms should be treated differently. No exception to the Bill of Rights should exist in this case.

The legislation before you is much more comprehensive than I have just described. I have tried to present only a representative sampling of the type of problems S. 1030 addresses. In closing, I can only say that this bill is essential to clear up the problems inherent in current law. It will require the enforcement agency to place emphasis on real criminals rather than on law-abiding gun owners. It will coordinate and add reason to the hastily-drafted and poorly constructed current law. With it we can rid ourselves of the regulatory mentality we have come to accept as commonplace, and get on with the job of meeting our nation's violent crime problems head on.

MIKE SYNAR
Member of Congress

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

PROSECUTION OF CRIMINALS, NOT PERSECUTION OF CITIZENS

A DEFENSE OF McCLURE-VOLKMER

Introduction

The McClure-Volkmer bill (S. 1030 and H.R. 3300) is intended to reform a number of provisions of federal gun laws which either serve no legitimate purpose or have been used by agents, pressed for arrest quotas, to entrap and harm law-abiding firearm owners. These abuses, directly attributable to vague and overly-broad provisions of the law, have been documented in three Senate hearings in recent years. Firearms collectors have been led into as few as three firearm sales, each one lawful, then charged under the vague proscription against "engaging in the business" of a gun dealer without a license. Collections valued in thousands of dollars have been confiscated on the same grounds, and agents have refused to return such even after the owner is acquitted of all charges. While attention was being given to these cases, genuine violent criminals were ignored. The agency enforcing the firearm laws, for instance, has conceded that barely 10% of its firearms arrests are on charges of "felon in possession of firearms" or of sale to a felon; that the average value of guns it seizes is over $116 each; that the majority of persons arrested on gun charges have no felony conviction record.

McClure-Volkmer gives protection to the legitimate gun owner and redirects efforts toward the real criminal. It for the first time defines what is "engaged in the business", requires that violations be willful rather than innocent before felony charges can be made, and gives remedies for illicit seizures. Conversely, it increases the focus upon real criminals. Definitions of person forbidden to have guns are made uniform and clear. Persons using guns in violent federal felonies are denied probation, parole or other release during terms of up to twenty-five years imprisonment. McClure-Volkmer is a bill whose time has come. That the administration has endorsed it, and over half the Senate cosponsored it, is no surprise.

Handgun Control, Inc.'s opposition to this measure seems premised on the belief that locking up honest firearm owners and ignoring or paroling genuine violent offenders is a good idea. Its arguments are based on misrepresentations of the bill and ignorance of general federal criminal law.

A. Section - Preamble

Handgun Control, Inc. Allegation: Misinterpretation of 2nd amendment.

Handgun Control, Inc. argues that the second amendment's guarantee of "the right of the people to keep and bear arms" protects only state militias, not individuals, from federal disarmament. This is both incorrect and circular argumentation. James Madison, drafter of the Bill of Rights, argued in his contributions to the Federalist papers that civilian gun ownership was a safeguard of American liberties, and that dictatorships were afraid "to trust the people with arms." Patrick Henry supported such a Bill of Rights with the call that "everyone who is able may buy a gun." Jefferson proposed that Virginia guarantee that "no freeman shall ever be debarred the use of arms."

Even if such were considered to be limited to the "militia," federal law recognizes "the militia of the United States consists of all able-bodied males at least 17 years of age and . . . under 45 years of age, who are, or have made a declaration of intention to become citizens . . ." Many state laws eliminate the sex and age discriminations of the federal statute. Courts have frequently struck down overt attempts to disarm citizens by law. See, e.g., State vs. Kessler, 289 Ore. 359, 614 P. 2d 94 (1980); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); Andrews v. State, 50 Tenn. 165, 8 Am. Rep. 8 (1871).

B. Section 102 (d)

Handgun Control, Inc. Allegation: Make (illegal) interstate transfers of firearms easier.

McClure-Volkmer Provision:

> "It shall be unlawful. . . for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who does not reside in the same State as the transferor when the transferor knows or has reasonable cause to believe that the acquisition of such firearm by such person would be in violation of any published ordinance or law of the State where such transfer occurs; except that this paragraph shall not apply to the loan or rental of a firearm to any person for temporary use for lawful purposes. . ."

Fact: Handgun Control, Inc. first argues that the McClure-Volkmer Bill will weaken existing controls on illegal firearms sales, and that the Gun Control Act's general prohibition against interstate sales is the "centerpiece" of that legislation. This is not the case. This portion of the Gun Control Act was aimed at claims that certain retailers had been doing quantity interstate business with residents of states which had strict gun control. The logical solution was simply to ban interstate sales which violated the laws of the recipient's state: there was no federal interest in banning transfers between residents of the 45 or so states which do not restrict firearm acquisition, merely to get at transfers to residents of the 5 states which do. All original drafts of the Gun Control Act would simply have banned interstate sales which would have violated the state gun laws. This is the same provision incorporated into McClure-Volkmer.

At the eleventh hour, apparently because a compromise on the precise wording could not be reached, a general ban on interstate sales was inserted. This ban was then modified by one arbitrary exception. A resident of a state contiguous to the one in which the sale is made may purchase certain firearms upon filling out certain paperwork. Thus, even if the sale were in full accord with all relevant state laws, a Texas resident could purchase from an Oklahoma resident, but a resident of New Mexico could not, only because his state does not have a contiguous border with Oklahoma. It is time that we replace this irrational rule with a simple and concise one such as is contained in McClure-Volkmer. Handgun Control's complaints of firearms being brought into New York would still be a basis for felony prosecution under McClure-Volkmer, since the transfer would violate New York law.

Handgun Control, Inc. objects that this simple and concise rule--an interstate sale is illegal if it would violate the laws in effect either in the state where it is made or in the state where the purchaser resides and will take the gun--is unworkable. Eliminating rhetoric, two major reasons are alleged. First, Handgun Control, Inc. argues that a seller cannot know the laws of other jurisdictions. This is not true. The Department of the Treasury has the responsibility to compile those laws into a single volume, which is published under the title of "Your Guide to Firearm Laws." This volume is made available to the public and given free to every firearms dealer. Secondly, Handgun Control, Inc. argues that it would be terribly burdensome to require the prosecution to prove that a citizen faced with felony penalties had reason to believe the sale was illegal. There are two obvious responses. First, normally the prosecution bears the burden of proof when it desires to subject an American citizen to imprisonment. Second, this presumption accords with reality. Very few states, all clustered in the Northeast, have adopted laws which could be violated by such a sale. In the event that it is discovered that retailer, for instance, is selling large numbers of guns to residents of New York, the prosecution should have no difficulty establishing that a firearms dealer, who is issued a free copy of "Your Guide to Firearms Laws" has "reason to believe" that those sales are unlawful. Handgun Control does not meet its difficult burden of justifying a law which is aimed at blocking sales to perhaps five states, but does so by making sales between all states into federal felonies, nor of proving why sales in conformance with local law should be permitted between Wisconsin and Minnesota but not Minnesota and Wyoming. The reason for the failure is simple: the Gun Control Act draws irrational distinctions, whereas McClure-Volkmer is keyed to the real federal concerns.

C. Section 102(d)

Handgun Control, Inc. Allegation: Improper Exception for Loan or Rental

McClure-Volkmer Provision:

> "It shall be unlawful . . . for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who does not reside in the same State as the transferor when the transferor knows or has reasonable cause to believe that the acquisition of such firearm by such person would be in violation of any published ordinance or law of the State or locality where the transferee resides or would be in violation of any published ordinance or law of the State where such transfer occurs; except that this paragraph shall not apply to the loan or rental of a firearm to any person for temporary use for lawful purposes. . . "

Fact: Existing law permits a person to loan a gun temporarily to a non-resident for lawful sporting purposes. McClure-Volkmer modifies this to read simply "lawful purposes." It is unlikely that this change would make any real impact in the firearm law or its enforcement and there is little reason why a citizen should be subject to a federal felony charge because he had loaned a firearm to a non-resident friend for exhibition or self-protection instead of shooting at tin cans. Handgun Control, Inc. seems to allege that the transfer could be made in violation of the law of the recipient's home state, and the recipient could then take it home with legal impunity to "roam the streets of a major city." We can only observe: (1) the exception is only for a loan "for temporary use," (2) the use must be "for lawful purposes," which a violation of law is not, and (3) another provision of the bill, Section 102(c) makes it illegal "for any person to transport into or receive in the state where he resides any firearm purchased or otherwise acquired by such person outside that state, if such purchase or acquisition of such firearm would be in violation of any published ordinance or law of the state of locality where he resides or was in violation of any published ordinance or law of the state or locality where the purchase or acquisition occurred." This "horrible hypothetical" is not only unlikely, it involves a misreading of no fewer than three sections of the bill.

D. Section 107

Handgun Control, Inc. Allegations: Interference with State Restriction on the Transportation of Firearms Within State Borders

McClure-Volkmer Provision:

> "Any provision of any legislation enacted, or of any rule or regulation promulgated, by any State prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void."

Fact: This provision is designed to protect legitimate hunters and sportsmen who occasionally must pass through a restrictive gun law state in order to get to another state. On occasion the vehicles of hunters and sportsmen have been subjected to random search and they have been charged with violating the local law, even though they had carefully stored their firearms under lock and key and such firearms were unloaded.

Against these very realistic abuses Handgun Control, Inc. poses a hypothetical involving "smuggled guns" which are travelling through a restrictive state "unloaded and inaccessible." McClure-Volkmer does not modify any federal laws dealing with smuggling. The incipient smugglers would be prosecuted for violation of the neutrality acts, custom laws, or of 18 U.S.C..924(b), which provides ten years' imprisonment for anyone transporting or receiving a firearm in interstate commerce with intent to commit a felony or knowledge that it may be used for such a commission. A state misdemeanor gun charge would be the least worry that the perpetrators would have.

E: Section 104(b)

Handgun Control, Inc. Allegation: Reduction in Penalties for Crimes Involving Gun Use.

McClure-Volkmer Provision:

> "Whoever uses any firearm or destructive device against the person of another, to commit a felony with respect to which the district courts of the United States have original and exclusive jurisdiction shall be sentenced to a term of imprisonment of not less than one year nor more than ten years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment of not less than five years nor more than twenty-five years. Notwithstanding any other provision of law, in the case of any case conviction under this subsection, the court shall not suspend the sentence of such person or give him a probationary sentence, nor shall such person be paroled or furloughed before completing such minimum sentence . . ."

Fact: Handgun Control, Inc. next claims that this bill would reduce penalties for firearm law violators. This claim clearly demonstrates Handgun Control, Inc.'s failure to take into account practice in the real world. Early drafts of the Gun Control Act of 1968 contained a true mandatory minimum sentence which would have prevented the granting of probation or parole to any violator who used a firearm in commission of a federal felony. Before passage, however, the provision became so watered down as to be almost totally useless. In theory, it now provides that whoever "uses a firearm" to commit a federal felony or "carries a firearm unlawfully" during this commission shall receive imprisonment from one to ten years on first offense and two to twenty-five on second offense. But since the bill only restricts of the giving of probation on second offense (and even then does not restrict the granting of parole) it has no real effect. A judge who feels that a serious offense should be punished by six month's imprisonment would simply give six months plus probation on both terms of imprisonment.

McClure-Volkmer, rather than adding a meaningless term which the judge need not impose, makes this a real mandatory penalty--no probation, no parole, no release on any basis for the true gun-using criminal. A first offender can get one to ten years, and a second offender two to twenty-five years, imprisonment on this basis. This is a far more significant punishment that a law which permits probation to be given on those sentences, and allows even those denied probation to obtain parole after serving only a third of their sentence. McClure-Volkmer will put the genuine criminals away, where current law lets them out in a facade of additional probationary terms.

The second allegation--that extortion involving gun use would not be within the "exclusive jurisdiction" of federal courts and thus not within this provison--shows that Handgun Control, Inc. has never bothered to read the definition of "exclusive jurisdiction." 18 U.S.C. 3231 provides that "the district courts of the United States shall have original jurisdiction, exclusive of the courts of the states, of all offenses against the laws of the United States." In short, of all federal offenses. "Exclusive" merely means that federal charges cannot be brought in state courts. Accordingly, the extortion charge is within the original and exclusive federal jurisdiction and one using a gun in its furtherance would be subject to the mandatory sentence.

F. Section 105 A

Handgun Control, Inc. Allegation: Making It Easier for Convicted Felons to Acquire Firearms.

McClure-Volkmer Provision:

> "A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment or possession of firearms and the Secretary shall grant such relief unless the applicant's record and reputation are such that the applicant will be likely to act in a manner dangerous to the public safety. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the

United States district court for the district in which he resides for a de novo review of such denial."

Fact: Under existing law various classes of persons (ranging from convicted felons to persons under a finding of mental disability to those who have received a dishonorable discharge from the military) are ineligible variously to receive, transport, or possess firearms. Ironically, the sections outlawing possession have different categories than those outlawing receipt, and vice versa. The result is that a person may be prohibited from receiving a firearm but not from possessing it, or prohibited from possessing a firearm but not from receiving it. Moreover, when the Gun Control Act was hurriedly passed, a provision was put in the section dealing with possession of firearms providing that a pardon relieved a convicted person of the disability but the Congress neglected to insert the same section in the portion dealing with receipt of a firearm, so that a person with a pardon may possess a firearm but not receive it!

McClure-Volkmer will coordinate all the sections and provide the same "prohibited persons" definitions for receipt, possession, and transportation.

Handgun Control, Inc. complains that McClure-Volkmer reverses the burden of proof for relief from disability. Under existing law, when a person formally makes an application for relief, the Secretary "may" grant it if it is established "to his satisfaction" that the conviction, record and reputation of the applicant are such that he would not behave in a way dangerous to the public safety. Normally, an agent is sent to check court files, prosecutors, police and references. Currently, the majority of applicants under this section are granted relief. The bulk of the applicants have non-violent offenses which are many years old and have long been law-abiding and productive members of their community. Few real criminals apply, since few want in effect to ask federal agents to investigate them. However, this wide discretion given to the Secretary has on occasion been abused, as by agents who extort favors in return for recommendations. The lack of meaningful review and the vagueness of the standard contribute to this problem.

McClure-Volkmer accordingly provides that the Secretary shall grant the relief unless the investigation into the applicant's "conviction, and the applicant's record and reputation, are such that the applicant will be likely to act in a manner dangerous to public safety." This will give the Secretary all the discretion that he needs in any reasonable case. If neither the nature of the conviction, nor the applicant's record, nor his reputation in the community suggest he is any risk, he should hardly be denied relief. Handgun Control, Inc. claims that it would be "virtually impossible" for the Secretary to secure the necessary information. This allegation ignores the fact that today the information is being gathered without problem, simply by sending out an agent for the prosecution files and to interview neighbors, employers, and references.

The memorandum next claims that de novo review in this decision in federal district court is unusual. It is hardly unusual; the Gun Control Act provides exactly this review for those dealers whose licenses have been revoked by the Secretary, and we see no reason why an ordinary citizen should not have the same rights.

G. Section 101(e)

Handgun Control, Inc. Allegation: Lessened Ability of Government to Monitor Gun Transactions

McClure-Volkmer Provision:

> (Gun Control Act): "The term 'dealer' means (A) any person engaged in the business of selling firearms . . . (B) any person engaged in the business of repairing firearms . . . (C) or any person who is a pawnbroker. . . "
>
> (McClure-Volkmer): "The term 'engaged in the business' means. . . as applied to a dealer in firearms, a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms."

Fact: Existing law requires federal licenses of three classes of persons, including those "engaged in the business" of dealing in firearms. It does not define what "engaged in the business" means, and enforcing agencies have used this vague clause to entrap legitimate firearms collectors into selling a few firearms from their collections, then arrested and charged those collectors with having "engaged in the business." McClure-Volkmer for the first time defines "engaging in the business" to mean repetitive sales for commercial motives, not the occasional sales or swaps of a hobbyist.

Handgun Control, Inc. alleges this would exclude a pawnbroker. This is blatantly incorrect. First, existing law requires pawnbrokers who receive guns as part of their business to obtain a license irrespective of whether they "engage in the business," and McClure-Volkmer does not modify this. Second, a pawnbroker who does any measurable gun trade, displays at his business premises, and is selling for profit, clearly is not acting as a hobbyist but is engaging in a regular course of trade for commercial motives.

H. Section 103(f)

Handgun Control, Inc. Allegation: The Virtual Elimination of BATF Compliance Inspections

McClure-Volkmer Provision:

> "Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. The Secretary, when he has probable cause to believe a violation of this chapter has occurred, and that evidence thereof may be found on such premises, may enter during business hours the premises (including places of storage) of any firearms importer, manufacturer, dealer, or collector or any importer or manufacturer, of ammunition for the purposes of inspecting or examining (1) any records or documents required to be kept. . . and (2) any firearms or ammunition kept or stored . . . "

Fact: Handgun Control, Inc. complains that the bill would prohibit compliance inspections. McClure-Volkmer simply extends to licensed dealers in firearms the same protections given other citizens under the Fourth Amendment. Today agents may swoop in upon a dealer, without warning, without a search warrant, without any probable cause--and demand to examine his records and inventory. In many cases this has been used for harassment; in others it has been used for "make work." Uniformly it has generated no useful data or prosecutions and it is noticeable Handgun Control cannot list a single such case. McClure-Volkmer modestly restricts this by providing that while agents may still make the inspections without a warrant they must have probable cause to believe they will find evidence that someone (be it the dealer or be it some purchaser) has violated the law. This is not an unreasonable restraint. In fact, G. R. Dickerson, BATF Director, during an interview in Shooting Industry November 1980, (p. 20), responded to a question dealing with probable cause and searches: ". . . my rule is that I will not even permit . . . a criminal investigation of a dealer unless we can establish criminal intent." The McClure-Volkmer standard is less stringent than the Director's own standard.

Handgun Control, Inc. complains, however, that the agents cannot get probable cause without seeing the records first. This ignores real world criminal investigative techniques. Law enforcement officers would obtain the probable cause by finding a violator, a prohibited person in possession or so on. From there they work to determine whether the firearm was sold to him in a willful manner. There are certainly a sufficient number of criminals running about upon whom the agents could concentrate their attentions, without wasting their time in random inspection of records. If a dealer is in fact transacting business with improper parties he will be subject to frequent, unannounced inspections under this provision and to resultant prosecution; if on the other hand his firearms never fall into criminal hands, the agency will be spared the waste, and he the harrassment, of such inspections.

I. Section 104(d)

Handgun Control Allegation: The Elimination of Many Forfeitures and Seizures of Firearms

McClure-Volkmer Provision:

> "Any firearm or ammunition involved in or used in any willful violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure, and upon conviction of the owner or possessor of such firearms or ammunition may be forfeited . . . that any dismissal of charges upon which such seizure is based, any verdict or disposition on such charges other than 'guilty', or any failure of the United States to prosecute such owner or possessor on such charges within one hundred and twenty days of such seizure, shall constitute an absolute bar to such forfeiture . . ."

Fact: Handgun Control, Inc. complains of the restrictions upon confiscation of firearms. Current law allows confiscation if the firearms were used or "intended to be used" in a violation. The problem is that BATF agents have used the vague "intended to be used" standard to confiscate a shop's entire inventory (thus driving a dealer out of business) or a collector's entire collection. They have often retained these even after the owner was acquitted.

To justify continuance of these abuses Handgun Control, Inc. produces hypotheticals which ignore other provisions of law and the real world. First, they raise the spectre of a person captured while plotting to assassinate the president, whose gun they argue could not then be taken away. One might simply note that first, an individual charged with attempted assassination has far more serious things to worry about than ownership of a firearm--such as a life sentence. Second, being then a convicted felon, he cannot possess the firearm in any event and the firearm (which will have been seized for evidence) cannot be returned to him.

Next, Handgun Control, Inc. argues that an assassin might borrow someone else's firearm and throw it away before being caught. One can only observe that a lunatic assassin, not worried about being shot by the Secret Service or receiving the gas chamber, is unlikely to be concerned about using one of his own firearms lest it be seized. In the second place, if the owner had agreed to its use, he would, of course, be charged with conspiracy or with aiding and abetting the original crime and would likewise have more serious matters to worry about.

Next, HCI raises the issue of plea bargaining. Athough this is not the place to argue the merits and demerits of this common practice, it is sufficient to state that Handgun Control, Inc. has ignored other provisions of law. If, for whatever reason, a prosecutor would "bargain away" a gun-related charge for a plea to another felony charge, the criminal would be ineligible to have the firearm returned to him because he would still be a "prohibited person" ineligible to possess a firearm.

Finally, Handgun Control, Inc. brings up the possibility that a person might be acquitted on a plea of insanity and, having been technically acquitted, be entitled to receive back a firearm which he had misused. This case has not, to our knowledge, ever come up; should it do so, of course, the individual would be a prohibited person by virtue of his mental commitment or finding of incompetency and therefore could not receive the firearm back in any event.

Conclusion

Legislation is generally enforced about as well as it is written. If legislation makes it easier and quicker to make cases against naive law-abiding citizens than against street-wise criminals, we cannot claim surprise when cases are made against law-abiding citizens. If enforcing agencies can justify larger budgets by "make work" random inspections than by carefully directed investigations, we cannot be startled when random inspections become the rule. If agents frustrated at losing a criminal case against a citizens are empowered to confiscate and hold his most valued property, we can hardly be dismayed that they do so.

These are precisely the types of misconduct which current law permits, and precisely the results which have been documented in three Senate hearings. Handgun Control, Inc. not only ignores those results and that documentation, it seemingly endorses them by opposing, with flimsy rationalizations, legislation designed to remove their cause. Street criminals are not worried by random dealer inspections, entrapment of gun collectors and confiscation of their museum-quality collections, or arrest of inadvertent, technical violators. Yet it is precisely these activities to which Handgun Control, Inc. lends its legislative and public relations support, apparently in the belief that any harassment of any firearm owner will be a public benefit, that it is better to have agents ruin legitimate citizens who choose to own firearms than to have them pursue the genuine street thugs whom McClure-Volkmer makes it easier to convict and impossible to release.

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